

# **EXHIBIT A**

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

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MICHAEL J. BYNUM AND CANADA  
HOCKEY LLC d/b/a EPIC SPORTS,  
Plaintiffs,

v.

BRAD MARQUARDT, in his  
individual capacity,  
Defendant.

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C.A. No.

4:17-cv-00181

VIDEOTAPED DEPOSITION OF  
BRAD MARQUARDT

DATE: Thursday, December 19, 2024

TIME: 9:12 a.m.

LOCATION: Texas A&M University  
Moore/Connally Building  
301 Tarrow Street, Room 124  
College Station, TX 77840

OFFICIATED BY: John Shavers

JOB NO.: 7060382

<p>1 APPEARANCES</p> <p>2 ON BEHALF OF PLAINTIFFS MICHAEL J. BYNUM AND CANADA</p> <p>3 HOCKEY LLC D/B/A EPIC SPORTS:</p> <p>4 DAVID L. PATRON, ESQUIRE</p> <p>5 Phelps Dunbar</p> <p>6 365 Canal Street</p> <p>7 New Orleans, LA 70130</p> <p>8 david.patron@phelps.com</p> <p>9 (504) 584-9295</p> <p>10</p> <p>11 ANDREW COFFMAN, ESQUIRE (by videoconference)</p> <p>12 Phelps Dunbar</p> <p>13 201 South Spring Street, #70</p> <p>14 Tupelo, MS 38802</p> <p>15 andrew.coffman@phelps.com</p> <p>16 (662) 842-7907</p> <p>17</p> <p>18 NICOHLAS F. WASDIN, ESQUIRE (by videoconference)</p> <p>19 Dwoskin   Wasdin</p> <p>20 110 North Wacker, Suite 2500</p> <p>21 Chicago, IL 60606</p> <p>22 nwasdin@dwowas.com</p> <p>23 (312) 434-5361</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 2</p>	<p>1 APPEARANCES (Cont'd)</p> <p>2 ON BEHALF OF TEXAS A&amp;M UNIVERSITY SYSTEM:</p> <p>3 TOM SILVER, ESQUIRE</p> <p>4 WARREN DELUCA, ESQUIRE</p> <p>5 Texas A&amp;M University System</p> <p>6 301 Tarrow Street</p> <p>7 College Station, TX 77840</p> <p>8 tsilver@tamus.edu</p> <p>9 wjdeluca@tamus.edu</p> <p>10 (979) 458-6159</p> <p>11 (979) 458-6150</p> <p>12</p> <p>13 ALSO PRESENT:</p> <p>14 Rob Curfnoc, Videographer</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 4</p>
<p>1 APPEARANCES (Cont'd)</p> <p>2 ON BEHALF OF DEFENDANT BRAD MARQUARDT, IN HIS</p> <p>3 INDIVIDUAL CAPACITY:</p> <p>4 RAY CHESTER, ESQUIRE</p> <p>5 McGinnis Lochridge</p> <p>6 1111 West 6th Street</p> <p>7 Austin, TX 78703</p> <p>8 rchester@mcginnislaw.com</p> <p>9 (512) 495-6000</p> <p>10</p> <p>11 JULIE A. FORD, ESQUIRE (by videoconference)</p> <p>12 George Brothers Kincaid &amp; Horton LLP</p> <p>13 114 West 7th Street</p> <p>14 Austin, TX 78701</p> <p>15 jford@gbkh.com</p> <p>16 (512) 495-1600</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 3</p>	<p>1 INDEX</p> <p>2 EXAMINATION: PAGE</p> <p>3 By Mr. Patron 8</p> <p>4</p> <p>5 EXHIBITS</p> <p>6 NO. DESCRIPTION PAGE</p> <p>7 Exhibit 1 Email Exchange w/ Mr. Bynum, 46</p> <p>8 05/05/10</p> <p>9 Exhibit 2 Email Response to Mr. Bynum, 51</p> <p>10 05/05/10</p> <p>11 Exhibit 3 Email, Mr. Bynum, 06/18/10 56</p> <p>12 Exhibit 4 Email Response to Mr. Bynum, 06/10/10 62</p> <p>13 06/10/10</p> <p>14 Exhibit 5 Email, Mr. Callaway and Ms. Smith, 01/16/14 66</p> <p>15 01/16/14</p> <p>16 Exhibit 6 Email, Mr. Dierker, 01/17/14 68</p> <p>17 Exhibit 7 Interrogatory Responses 77</p> <p>18 Exhibit 8 Declaration 90</p> <p>19 Exhibit 9 Screenshot, TAMU Times 96</p> <p>20 Exhibit 10 Whit Canning Article 97</p> <p>21 Exhibit 11 Email, Mr. Bynum and Mr. Cannon, January 2022 103</p> <p>22 January 2022</p> <p>23 Exhibit 12 Email, Mr. Hinckley, 01/23/14 112</p> <p>24 Exhibit 13 Mr. Canning Press Release 114</p> <p>25</p> <p style="text-align: right;">Page 5</p>

1 PROCEEDINGS  
2 THE VIDEOGRAPHER: We're now on the  
3 record. The time is 9:12 a.m., December 19, 2024.  
4 This is the deposition of Brad Marquardt. Okay.  
5 THE OFFICER: Good morning. My name  
6 is John Shavers. I'm the reporter assigned by  
7 Veritext to take the record of this proceeding.  
8 This is the deposition of Brad  
9 Marquardt taken in the -- taken in the matter of  
10 Michael J. Bynum, et. al., vs. Brad Marquardt. It's  
11 being taken on December the 19th, 2024. We are  
12 located in in College Station, Texas.  
13 I am a notary authorized to take  
14 acknowledgments and administer oaths in Texas.  
15 Absent an objection on the record  
16 before the witness is sworn, all parties and the  
17 witness understand and agree that any certified  
18 transcript produced from the recording of this  
19 proceeding:  
20 - is intended for all uses permitted  
21 under applicable procedural and  
22 evidentiary rules and laws in the  
23 same manner as a deposition recorded  
24 by stenographic means; and  
25 - shall constitute written stipulation

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1 of such.  
2 This proceeding will be recorded via  
3 video technology by Rob Curfnoc.  
4 At this time will everyone in  
5 attendance in person here, beginning with the  
6 gentlemen on the end here next to Mr. Patron and  
7 proceed back around the table, please identify  
8 yourselves for the record.  
9 MR. SILVER: Tom Silver, I'm an  
10 attorney with Texas A&M University System.  
11 MR. PATRON: David Patron of the law  
12 firm Phelps Dunbar representing the plaintiffs,  
13 Michael Bynum and Canada Hockey doing business as Epic  
14 Sports.  
15 MR. CHESTER: Ray Chester representing  
16 Brad Marquardt.  
17 MR. DELUCA: Warren DeLuca with Texas  
18 A&M University System.  
19 THE OFFICER: And now will those who  
20 are attending by Zoom please identify yourselves?  
21 MR. COFFMAN: Andrew Coffman on behalf  
22 of the plaintiffs, and I have with me in my office one  
23 of the plaintiffs, Mike Bynum.  
24 THE OFFICER: Thank you. Hearing no  
25 objection, I will now swear in the witness.

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1 Mr. Marquardt, would you please raise  
2 your right hand.  
3 WHEREUPON,  
4 BRAD MARQUARDT,  
5 called as a witness and having been first duly sworn  
6 to tell the truth, the whole truth, and nothing but  
7 the truth, was examined and testified as follows:  
8 THE OFFICER: Thank you.  
9 Mr. Patron, you may proceed, sir.  
10 MR. PATRON: Thank you.  
11 EXAMINATION  
12 BY MR. PATRON:  
13 Q Good morning, Mr. Marquardt. As I said, I'm  
14 David Patron. I represent the plaintiffs in this  
15 matter. I'm going to be taking your deposition today.  
16 Have you ever had your deposition taken before?  
17 A No.  
18 Q Okay. So I just want to go over some ground  
19 rules just so you're familiar with it. All I can do  
20 today is ask you questions. I can't answer any  
21 questions from you. And all that you're required to  
22 do is answer my questions truthfully and fully to the  
23 best of your ability. Can you do that?  
24 A Yes.  
25 Q Is there anything that would prevent you

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1 from answering my questions truthfully and completely  
2 today?  
3 A No.  
4 Q Okay. Now there's a court reporter here  
5 that's going to be taking down everything that we say.  
6 So it's important that we not talk over each other.  
7 And so if you could allow me to finish my questions  
8 before your answers, we'll get a good record of this  
9 proceeding. Can you do that?  
10 A Yes.  
11 Q And I'm going to do my best to not talk over  
12 you and allow you to finish your answer. Sometimes  
13 I'm not good at that and if I do, I'm sure Mr. Chester  
14 here is going to remind me that I need to let you  
15 finish and I'm going to do that.  
16 There may be some times where Mr. Chester  
17 will make an objection to a question that I'm asking  
18 you. And if he does that, unless he instructs you not  
19 to answer, you can go ahead and answer my question.  
20 Do you understand that?  
21 A Yes.  
22 Q Okay. I think that's basically it. The  
23 other thing is they can only take down what you say.  
24 So if you give a nod of your head or you say "uh-huh"  
25 or something like that, it won't be a clear record.

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1 So just give, you know, full verbal answers if you  
2 could.  
3 A I will.  
4 Q Okay. The first thing I'd like to do is  
5 just go over some general background of your work and  
6 educational history. Can you tell me your educational  
7 history?  
8 A Yes. I'm class of '88 with a journalism  
9 degree at Texas A&M.  
10 Q All right. And were you there for four  
11 years?  
12 A No. I -- I went to Blinn Junior College for  
13 two years.  
14 Q And then you went to Texas A&M for two  
15 years?  
16 A Correct.  
17 Q And you got a degree in journalism?  
18 A I did.  
19 Q Did you study journalism also at your junior  
20 college?  
21 A No.  
22 Q Okay. And when you were getting your  
23 journalism degree, did you have any training or  
24 education in journalism ethics?  
25 A I'd have to look at my -- my transcript, I

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1 suppose, but I don't recall my classes.  
2 Q It's not necessarily your classes. It could  
3 have been in one of your classes. Do you recall  
4 receiving any education or training during the course  
5 of your getting a degree in journalism at Texas A&M?  
6 A I don't recall it.  
7 Q Okay. What about any education or training  
8 about copyright law?  
9 A I don't recall. It's been 35 years since my  
10 undergrad days.  
11 Q Okay. While you were at Texas A&M, were you  
12 in the Society of Professionalism Journalists?  
13 A Yes.  
14 Q What is that?  
15 A It is an organization that supports  
16 journalism students, and I thought it would look good  
17 on my resume.  
18 Q Is it just for students?  
19 A I don't know.  
20 Q Are you currently in the Society of  
21 Professional Journalism?  
22 A No.  
23 Q When did you stop being in that society?  
24 A I don't recall. Probably when I graduated.  
25 Q Okay. Are you in any professional

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1 organizations currently?  
2 A Yes.  
3 Q What are those organizations?  
4 A The College Sports Communicators. It was  
5 formerly the College Sports Information Directors of  
6 America. Probably in the Football Writers Association  
7 and the U.S. Basketball Writers Association.  
8 Q And how long have you been in those four  
9 different organizations?  
10 A I have been in CSC, College Sports  
11 Communicators, since 1990. Football Writers, I'm not  
12 sure. For a long time. And the Basketball Writers  
13 for the last two or three years.  
14 Q And the College of Sports Information  
15 Directors is a predecessor of CSC?  
16 A They just rebranded.  
17 Q Okay. So it's really just three  
18 organizations?  
19 A Yes.  
20 Q Okay. What do you do with the College of  
21 Sports Communicators? What is your involvement in  
22 that organization?  
23 A They have an annual convention where you  
24 have workshops that you attend. And through the year,  
25 they provide, you know, all academic -- all-American

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1 teams, things that we would use in the Athletic  
2 Communications Office.  
3 Q And the workshops, are those educational  
4 training workshops?  
5 A Yes.  
6 Q Have you ever had any training or education  
7 regarding journalism ethics in association with the  
8 College of Sports Communicators?  
9 A I do not recall that.  
10 Q What about any education or training  
11 regarding copyright laws?  
12 A I don't recall that.  
13 Q Do you have -- what is your involvement in  
14 the Football Writers Association?  
15 A I'm a member. It gives me a directory of  
16 all the media covering football and all the other --  
17 my peers at the other schools across the nation.  
18 Other than that, it doesn't -- I vote on some awards,  
19 et cetera, as the entire group does.  
20 Q Are you in that organization because you are  
21 a football writer?  
22 A I'm not -- no.  
23 Q So why are you in that organization?  
24 A Because it -- it -- I'm being supportive of  
25 the writers, which I think is important. And also it

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4 (Pages 10 - 13)

1 gives me access to resources that all football  
2 reporters would have.

3 Q And what about the Basketball Writers  
4 Association? What is your involvement in that?

5 A Very similar to Football Writers. I have a  
6 membership and, honestly, I don't recall a single  
7 interaction I've had with the Basketball Writers,  
8 except they -- they sent me a directory.

9 Q Okay. Other than those three professional  
10 organizations, are you involved in any other  
11 professional organizations?

12 A No.

13 Q Can you recall ever receiving training or  
14 education in any capacity regarding journalism ethics?

15 A No.

16 Q Do you have any understanding of journalism  
17 ethics?

18 A I would say a loose understanding.

19 Q And how did you come about that  
20 understanding?

21 A Well, I'm -- I was a journalism graduate,  
22 and I've worked in the industry for 35 years.

23 Q Okay. But I believe you testify you don't  
24 recall receiving any education or training when you  
25 were a student; is that right?

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1 A I don't recall it.

2 Q Right. And I asked you if you recall  
3 receiving in any capacity, and you don't recall that.  
4 So you say you have a loose understanding. I'm trying  
5 to understand where does that come from, if you've had  
6 no training or education that you can recall.

7 A I guess it -- it would be from the working  
8 in the working in the industry for -- but working in  
9 the industry for 35 years.

10 Q Okay. So what happened after you graduated  
11 from Texas A&M with a degree in journalism? Where did  
12 you go after that?

13 A I went to the University of Georgia.

14 Q And what did you do at the University of  
15 Georgia?

16 A I was the editorial -- editorial assistant  
17 for the Georgia Bulldog magazine.

18 Q And what did you do as the editorial  
19 assistant?

20 A I wrote stories about the University of  
21 Georgia student-athletes, and I believe I handled  
22 subscriptions.

23 Q Okay. So you actually wrote articles for  
24 the magazine?

25 A Yes.

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1 Q So you're a published author. Is that  
2 correct?

3 A Not in my view. There --

4 Q Why not in your view?

5 A Well, I mean, there are things with my  
6 bylines, but your question makes it sound like I'm  
7 a -- a book author or something. I -- I wrote for an  
8 alumni magazine and there was my byline on it, but  
9 I --

10 Q Mr. Marquardt, I didn't say anything about  
11 books. I just said you're a published author; is that  
12 correct?

13 A [No audible response.]

14 Q Do you disagree with that statement?

15 A I -- I don't agree.

16 Q Okay. And why is that? Because you haven't  
17 published books?

18 A Correct.

19 Q Okay. How many articles have you written  
20 that have been published?

21 A Fifty with my byline.

22 Q And how many of those were at the Georgia  
23 Bulldog magazine?

24 A I don't recall.

25 Q Was it just a small fraction?

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1 A Yeah, there were 12 magazines. I probably  
2 wrote three things in there, so what's that, 36. And  
3 over the past 35 years, there I guess occasionally  
4 have been times where -- my name's on a lot of things.  
5 But hard to say if, you know -- 50 is probably a good  
6 number.

7 Q Have you ever copyrighted any articles that  
8 you've written?

9 A Not to my recollection.

10 Q Have you ever designated on an article that  
11 you've written that you're the copyright owner?

12 A I don't recall doing that.

13 Q Is it possible that you have, but you just  
14 don't recall?

15 A Well, nothing I've ever done has been  
16 copywritten. And I -- I don't know if there was a  
17 tagline that says that it was. But I know that I've  
18 never copywritten any -- anything.

19 Q What do you mean when you say that it's  
20 never been copywritten? What does that mean to you?

21 A I -- I assume that there is an official  
22 process that you go through, and I know I've never  
23 gone through an official process.

24 Q Are you talking about filing with the U.S.  
25 Copyright Office?

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1 A Yes.  
2 Q That's what you're talking about?  
3 A Yes.  
4 Q Okay. Putting aside filings with the U.S.  
5 Copyright Office, have any of your articles that  
6 you've authored designated you as the copyright owner?  
7 A No.  
8 Q And you're sure about that?  
9 A Yes.  
10 Q Okay. Who's the copyright owner of the  
11 articles that you have authored?  
12 A The University of Georgia Athletic  
13 Association and Texas A&M.  
14 Q So they are the copyright owners of your  
15 articles?  
16 A The intellectual property that I produce is  
17 owned by Texas A&M currently. Before that, it would  
18 have been the University of Georgia.  
19 Q And why is that?  
20 A I don't know.  
21 Q Okay. Would you have the right to reproduce  
22 an article that is owned by, for instance, Texas A&M?  
23 A I -- I don't understand your question.  
24 Q I think you just testified that the people  
25 that you work for own the articles, that they own the

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1 copyright for the articles that you've written; is  
2 that correct?  
3 MR. CHESTER: No, he did not testify  
4 they own the copyright.  
5 MR. PATRON: All right.  
6 BY MR. PATRON:  
7 Q Well, then, can you clarify? That's what I  
8 understood you to say.  
9 A Can you repeat your question?  
10 Q Okay. My question is: If you are not the  
11 copyright owner of the articles you've written, and  
12 your understanding is that the people that you work  
13 for are the owners, would you have the right to  
14 reproduce those articles?  
15 A I don't know.  
16 Q You don't know?  
17 A No.  
18 Q So you think you can reproduce the  
19 articles --  
20 A No, I -- I -- I'm sorry.  
21 Q Do you think you can reproduce the articles  
22 that other people have copyrights to?  
23 MR. CHESTER: Objection. Form. You're  
24 twisting his words around.  
25 MR. PATRON: I'm asking a question.

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1 MR. CHESTER: I don't know why --  
2 MR. PATRON: I'm not twisting words.  
3 He can either answer or not.  
4 BY MR. PATRON:  
5 Q You understand my question?  
6 A One more time, please.  
7 Q I said, do you think you have the right to  
8 reproduce articles which are owned by other people  
9 that own the copyrights to those articles?  
10 A No.  
11 Q And why do you have that understanding?  
12 A I would say that -- I'm sorry. Repeat your  
13 question one more time.  
14 Q You just testified that you do not have the  
15 right to reproduce articles that are owned by other  
16 people that own the copyrights to those articles.  
17 MR. CHESTER: Okay. Which is it? That  
18 they own it or they own the copyright? Because that's  
19 two different things. You keep -- I object. It's a  
20 compound question.  
21 MR. PATRON: You can object. Let's  
22 just keep it to an objection.  
23 BY MR. PATRON:  
24 Q The question is: You just testified that  
25 you do not have the right to reproduce an article that

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1 someone else owns the copyright to; is that correct?  
2 You said yes to that.  
3 A You're -- you're speaking in a hypothetical,  
4 and I don't know the answer to copyright rules. I  
5 feel very confident that things that -- that I would  
6 produce for Texas A&M are Texas A&M's property, and I  
7 wouldn't -- I -- I wouldn't go and put them out  
8 somewhere else, nor would I have an avenue to do that.  
9 MR. PATRON: Okay. I'm going to object  
10 as nonresponsive.  
11 BY MR. PATRON:  
12 Q Do you want to take back your answer that  
13 you do not have the right to reproduce articles that  
14 other people own the copyrights to? Because I have a  
15 follow-up to that question.  
16 A No.  
17 Q Okay. How is it that you've come to the  
18 understanding that you do not have the right to  
19 reproduce articles that other people have the  
20 copyright ownership of?  
21 A I don't know.  
22 Q Is it because, if someone owns the copyright  
23 to it, you don't have the right to reproduce it?  
24 That's the law? Do you understand that?  
25 A I don't know the law. My loose

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1 understanding would say -- would agree with that  
2 statement.  
3 Q Okay. How long were you at the University  
4 of Georgia's Athletic Association?  
5 A One year.  
6 Q And why did you leave?  
7 A Texas A&M had a job, and they offered it to  
8 me.  
9 Q And what year was that?  
10 A 1990.  
11 Q And what position did you accept?  
12 A Assistant director.  
13 Q Assistant director of what?  
14 A Sports Information.  
15 Q Wasn't it assistant director of Media  
16 Relations?  
17 A At the time, it was sports information. We  
18 rebranded to Media Relations, and now we have  
19 rebranded to Athletic Communications.  
20 Q But was it the same job, even after the  
21 rebranding?  
22 A Yes. Times have changed. But it, you know,  
23 we've gone from phones to fax machines to Zoom calls  
24 to the internet all of my career.  
25 Q And what were your duties and

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1 responsibilities as the assistant director of Media  
2 Relations?  
3 A I publicized -- I publicized the -- whatever  
4 my assigned sports and kept statistics, built  
5 publications, media guides to assist the media with  
6 their coverage of Texas A&M athletics.  
7 Q Did you write articles for Texas A&M?  
8 A I am sure -- yes.  
9 Q Are you an award-winning journalist?  
10 A Yes.  
11 Q What awards have you won?  
12 A A variety of publication awards.  
13 Q And what were the awards for?  
14 A Our media guides. So I -- I won awards for  
15 the football media guide, for track and field media  
16 guides, cross-country media guides, for how they  
17 looked, how useful they were, that sort of thing.  
18 Q Have you ever won an award for an article  
19 that you've written?  
20 A I do not recall that.  
21 Q So the awards you've won have been for  
22 publication of media guides; is that accurate?  
23 A Yes.  
24 Q And have you won more than 25 publication  
25 awards?

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1 A I have.  
2 Q Has it all been for media guides?  
3 A I'd have to go look through the  
4 certificates, but I think it was all for media guides.  
5 Q And how are those awards decided?  
6 A There are voters -- voters from within the  
7 organization. They -- everybody sends their media  
8 guide, and then they're judged on a checklist of -- of  
9 items that need to be in that media guide and its  
10 appearance.  
11 Q And what organizations are those?  
12 A It would be the College Sports of -- or  
13 College Sports Communicators, formerly CoSIDA, or  
14 College Sports Information Directors of America.  
15 Q So all of your publication awards have come  
16 from the College of Sports Communicators or its  
17 predecessor before the rebranding?  
18 A That's -- that is correct. I -- I have also  
19 been a part of the -- the group that was honored for  
20 Johnny Manziel's Heisman campaign. So I don't even  
21 know if my name is on that award, but it's not  
22 inconceivable.  
23 Q The staff directory of the Texas A&M  
24 Athletics website says that you're one of the most  
25 versatile members of the Texas A&M Athletics

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1 Department. Do you agree with that statement?  
2 A Yes, I wrote it.  
3 Q Why are you one of the most versatile  
4 members of the Texas A&M Athletics Department?  
5 A So I guess you want the truth here.  
6 Q I think that's what you're required to give  
7 me.  
8 A Well, there was a guy, Alan Jones, and he  
9 was -- his bio wrote one of the most versatile members  
10 of the department, and then he retired. And I loved  
11 the way that sounded. And so I thought, I'm going to  
12 steal that phrase.  
13 Q Is there anything else that you stole to put  
14 together this bio for yourself?  
15 A I don't have the bio in front of me, but I  
16 don't -- I don't recall.  
17 Q So you like what he wrote, and so you  
18 decided to use it; is that right?  
19 A Yes.  
20 Q Did you talk -- who was that person?  
21 A Alan Jones.  
22 Q Alan Jones. Did you talk to Alan Jones  
23 about that?  
24 A I don't recall.  
25 Q You don't recall?

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1 A I mean, he retired and went back to  
2 Mississippi.  
3 Q So probably not?  
4 A Probably not.  
5 Q Okay. The bio -- did you write this whole  
6 bio about yourself? Is this something that you  
7 drafted?  
8 A Yes.  
9 Q Okay. It says that you handled the  
10 publicity efforts of virtually every varsity sport at  
11 some point during your 30-plus tenure in Aggieland; is  
12 that true?  
13 A Yes.  
14 Q So every sport at Texas A&M you've handled  
15 the publicity efforts for?  
16 A Not all of them, but close.  
17 Q Okay. Is that something that was on someone  
18 else's bio that you used?  
19 A No.  
20 Q And you wrote that yourself?  
21 A I did.  
22 Q Okay. Is that something you'll do sometimes  
23 is, when you're producing something as a journalist?  
24 You'll use something that someone else has written?  
25 A Can you -- that's a very broad question.

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1 Can you reword?  
2 Q Okay. This is an example where you're  
3 writing something about yourself or you use something  
4 that someone else has written. You use it for  
5 yourself. I'm asking, are there other examples of  
6 that, that you've done that?  
7 A I would say that I read other people's -- I  
8 look at other people's game notes and see if there's  
9 any ideas or themes that I can apply to what I'm doing  
10 now.  
11 Q Have you ever used, like, specific words  
12 that people use and put it in your own article?  
13 A No. I -- I don't plagiarize.  
14 Q Well, what is plagiarism?  
15 A Where you're copying someone else's words  
16 into something that are -- that is yours.  
17 Q So you understand that you can't do that?  
18 A Yes.  
19 Q And where did you come to that  
20 understanding?  
21 A I went to school, to the university for four  
22 and a half years, and I understand that -- what  
23 plagiarizing is because you can't do it.  
24 Q That's something you learned in your  
25 journalism degree?

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1 A I would say every college student knows what  
2 plagiarism is to be able to do research papers or  
3 essays, et cetera.  
4 Q Do you understand what the term  
5 "attribution" means?  
6 A Yes.  
7 Q What does that mean to you?  
8 A That you attribute the -- you attribute  
9 where you got the information from the source of the  
10 information.  
11 Q And what does that term "attribution" mean  
12 in the context of journalism?  
13 A It's a pretty broad -- broad question, but  
14 your sources are important, and you can't just write  
15 broad sweeping statements just without attribution to  
16 a source that would know something.  
17 Q And what about if you're actually publishing  
18 the words of someone else? What is the significance  
19 of attribution in that context?  
20 A I don't know.  
21 Q Is there any requirement that you attribute  
22 the source of that work in journalism?  
23 A I'm going to say yes, but I mean, I -- yes,  
24 that's my belief.  
25 Q Okay. You're no longer the assistant

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1 director of Media Relations; is that correct?  
2 A Yes.  
3 Q How long did you have that title?  
4 A From 1990 until 2018.  
5 Q And what changed in 2018?  
6 A I was promoted to the director of Athletics  
7 Communications.  
8 Q Do you know why you were promoted?  
9 A I would hope because of my quality work.  
10 Q But you don't know that for a fact?  
11 A No.  
12 Q Okay. How did your duties and  
13 responsibilities change once you became the director  
14 of Athletic Communications?  
15 A I began supervising the -- the staff. I  
16 stepped away from some of the day-to-day coverage of  
17 sports so I could be more of a manager.  
18 Q And how long did you hold that position?  
19 A I'm still in that position.  
20 Q Have you taken on any other duties or  
21 responsibilities or titles?  
22 A No.  
23 Q Are you not the --  
24 A I mean, duties is a -- I'm sorry. You can  
25 answer -- or ask your question.

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8 (Pages 26 - 29)

<p>1 Q Are you not currently the assistant AD for 2 Athletics Communications?</p> <p>3 A I am, yes -- yes, you're correct. I was the 4 director of Athletic Communications and then that 5 title was changed to the Assistant AD, yes.</p> <p>6 Q So what is the significance of the change in 7 that title?</p> <p>8 A It's just a higher level -- higher 9 classification of job that I -- that I would be would 10 be so I could supervise people properly, chain of 11 command --</p> <p>12 Q So, how did your duties and responsibilities 13 change when you became the assistant AD for Athletics 14 Communications?</p> <p>15 A I would say that the move from Director to 16 Assistant Athletics Director, I was performing the 17 same duties.</p> <p>18 Q Are you familiar with a "12th Man" campaign 19 that was initiated by Texas A&amp;M in the 2013, 2014 20 timeframe?</p> <p>21 A Yes.</p> <p>22 Q What was your involvement in that campaign?</p> <p>23 A I was not involved.</p> <p>24 Q You were not involved at all in that 25 campaign?</p> <p style="text-align: right;">Page 30</p>	<p>1 collaboration of a portion of the department that 2 wasn't me and the university.</p> <p>3 Q So you had colleagues within your department 4 working on the 12th Man campaign, but you're saying 5 that you did not work on it?</p> <p>6 A Correct.</p> <p>7 Q Did you have discussions with your 8 colleagues about the 12th Man campaign?</p> <p>9 A I don't recall.</p> <p>10 Q You don't recall any discussions with any of 11 your colleagues about the 12th Man campaign?</p> <p>12 A I don't recall. I don't recall the 13 discussions.</p> <p>14 Q Okay. And when you say you don't recall, 15 does that mean that it's possible that you had those 16 discussions and you just don't recall them, or you 17 think you didn't have any?</p> <p>18 A I'm saying it was ten years ago, and it 19 wasn't my project. I had my own things to -- to do, 20 and I don't recall what was discussed.</p> <p>21 Q Do you have any memory of when you first 22 learned of the 12th Man campaign?</p> <p>23 A I don't recall.</p> <p>24 Q Well, you recall that the Seattle Seahawks 25 were having a successful year in 2013, and they made</p> <p style="text-align: right;">Page 32</p>
<p>1 A No.</p> <p>2 Q What is your understanding of that campaign?</p> <p>3 A In 2013, there was a NFL team that -- NFL 4 team that uses 12 in some of their trademark, and 5 there's an agreement with the university that -- that 6 they can -- they can use our trademark.</p> <p>7 Q And that's the Seattle Seahawks; right?</p> <p>8 A Yes. So, yes. As I understand everything, 9 it is a -- you have to protect the trademark, use the 10 trademark to keep the trademark. But that's -- that's 11 something that I've just picked up over years. It 12 didn't necessarily stick to 2013. That's an ongoing 13 process, the protection of the "12th Man" trademark.</p> <p>14 Q So in 2013, 2014, you were the Assistant 15 Director of Media Relations; right?</p> <p>16 A Correct. Correct.</p> <p>17 Q What department within the university did 18 you work?</p> <p>19 A Athletics.</p> <p>20 Q Okay. Was the Athletics Media Relations 21 Department responsible for the 12th Man campaign?</p> <p>22 A No.</p> <p>23 Q Who was responsible for that?</p> <p>24 A I wasn't involved in it, so I don't really 25 know. Since then, I've learned that it is -- was a</p> <p style="text-align: right;">Page 31</p>	<p>1 it to the playoffs that year; is that right?</p> <p>2 A Yes.</p> <p>3 Q Okay. Do you recall that there was a 4 campaign centered around the Seahawks' playoff run?</p> <p>5 A There are many things I've -- I've learned 6 since January of 2014. But I don't -- as I said, I 7 wasn't point -- or part of any sort of a -- before, 8 with the campaign, I wasn't a part of it, so I don't 9 really know about it.</p> <p>10 Q How do you know Mike Bynum?</p> <p>11 A Mike was an author that came to our campus, 12 I don't recall the years, and he would be going 13 through our photo archives seeking photos for projects 14 he was working on.</p> <p>15 Q Do you remember first meeting him?</p> <p>16 A I do not, but it was a long time ago, like 17 in the '90s.</p> <p>18 Q In the 1990s. Do you recall any of the 19 interactions you had with Mr. Bynum in the 1990s?</p> <p>20 A Just that I knew him, liked him, wanted to 21 be helpful.</p> <p>22 Q Well, why did you like him?</p> <p>23 A I think I just like people.</p> <p>24 Q Why did you want to help him?</p> <p>25 A I like to be helpful as well, especially for</p> <p style="text-align: right;">Page 33</p>

<p>1 things that are putting Texas A&amp;M into -- into a good 2 light. 3 Q And do you think Mr. Bynum was doing that, 4 putting Texas A&amp;M in a good light? 5 A I mean, I -- I guess at the time I -- I 6 didn't know, but I mean, I was hopeful. 7 Q Okay. Have you helped other authors the way 8 you've helped Mr. Bynum? 9 A Yes. 10 Q Which authors? 11 A Homer Jacobs. 12 Q Who's Mr. Jacobs? 13 A He's deceased, and he wrote Texas 14 A&amp;M-centric books. Rusty Burson, not deceased, would 15 be another person in the -- in the -- that did things 16 like that. I, you know -- yeah. There -- there's 17 been -- I would -- I would say that, you know, I 18 specifically remember Mike coming in looking for 19 photos. The other guys less so, but I -- I still help 20 them with whatever I can. 21 Q And would you help get photos for Mike? 22 A Yes. 23 Q Do you keep a collection of photos? 24 A There's a photo archive, yes. 25 Q Are those electronically kept, the archive?</p> <p style="text-align: right;">Page 34</p>	<p>1 Q It could scan a piece of paper with text on 2 it; isn't that right? 3 A It could scan anything. 4 Q Okay. And you had that in 2013? 5 A I don't recall when I -- I had it exactly, 6 but -- 7 Q Well, you just specified you had it in 2014. 8 Now I'm asking about 2013. Did you have it in 2013? 9 A I don't recall, but I think I've had the 10 scanner for a long time. 11 Q Okay. Who did you work with in your 12 department in 2013 and 2014? Who were members of your 13 department? And let me ask you, what was the name of 14 your department that you worked in? Is it Media 15 Relations? 16 A Yes. 17 Q Okay. So how many people were in Media 18 Relations in 2013 and 2014? 19 A I don't have an exact number because I 20 wasn't supervising then. But I would say that there's 21 about eight of us. 22 Q Okay. And that included Matt Simon? 23 A No. I -- I worked with Matt Simon, but he 24 was not in our office. 25 Q What office was he in?</p> <p style="text-align: right;">Page 36</p>
<p>1 A There's digital and there are the actual 2 photographs. 3 Q Are some of the actual photographs not 4 digitized? 5 A Yes, many. 6 Q Many are not? How do you send someone a 7 copy of a photo that has not been digitized? 8 A At this time, I -- I mean, I don't think 9 that scenario ever happens. Back in the day, you 10 would mail photos, but -- 11 Q Let's say like in 2014, if you needed to 12 send someone a copy of a photo that you didn't have an 13 electronic copy of, what would you do? 14 A You would scan it. 15 Q Is that something you would do? 16 A Yes. 17 Q So you had access to a scanner in 2014? 18 A A photo scanner, yes. 19 Q Well, could it scan other things besides 20 photos? 21 A Yes, but it would still just be a photo. 22 Q Right. But the scanner you have had the 23 capacity and ability to scan things other than photos; 24 is that right? 25 A Yes.</p> <p style="text-align: right;">Page 35</p>	<p>1 A It's now Digital Strategy. I'm -- I'm not 2 sure what department. It probably would have been in 3 the Internet Department. The Web Department. 4 Q Okay. But he wasn't in Media Relations? 5 A Actually, he -- at some point, he built and 6 maintained our website. And then he had a career 7 change, and he came over and worked in SID in 8 sports -- in Media Relations. And now he's gone back, 9 and and he's the webmaster again. 10 Q You said SID. What -- 11 A Sports information director. 12 Q Okay. Would you have daily interactions 13 with Matt Simon back in 2013 and 2014, even if he 14 wasn't in your department? 15 A I wouldn't say daily, but as needed. 16 Q Regular? 17 A Regular, yeah. 18 Q Did you work in close proximity to him? 19 A I honestly don't recall where -- I know 20 where I was and we worked in -- not next door, but 21 close. 22 Q Okay. You said that it was about eight 23 people that were in your department. Who were those 24 eight people, the best you can recall, back in 2013 25 and 2014?</p> <p style="text-align: right;">Page 37</p>

<p>1 A Allen Cannon was the director.</p> <p>2 Q He was your supervisor?</p> <p>3 A Correct. Jackie Thornton was our</p> <p>4 administrative assistant. Adam Quisenberry, Matt</p> <p>5 Callaway, Thomas Dick, maybe Meredith Collier.</p> <p>6 Q Meredith Collier?</p> <p>7 A Yes. What -- what -- how -- what number am</p> <p>8 I up to now?</p> <p>9 Q You've got Allen Cannon, Jackie Thornton,</p> <p>10 Adam --</p> <p>11 A Quisenberry.</p> <p>12 Q Quisenberry. Meredith Collier, Thomas Dick,</p> <p>13 and Meredith.</p> <p>14 A Yeah, so I -- I --</p> <p>15 Q Matt Callaway?</p> <p>16 A I said Matt Callaway; right?</p> <p>17 Q Yeah. Was Krista Smith in your group?</p> <p>18 A No.</p> <p>19 Q What about Jason Cook?</p> <p>20 A He was not in our office. He was Allen</p> <p>21 Cannon's direct supervisor.</p> <p>22 Q Okay. In your office, who would you sort of</p> <p>23 interact on a daily basis? Would it be your</p> <p>24 administrative assistant?</p> <p>25 A Yeah. Yes.</p> <p style="text-align: right;">Page 38</p>	<p>1 A Yes.</p> <p>2 Q And others asked you to scan things for</p> <p>3 them; is that correct?</p> <p>4 A If they had something that needed to be</p> <p>5 scanned. And I don't recall this scenario that you're</p> <p>6 putting out there, but I mean, I -- I would have</p> <p>7 helped them out.</p> <p>8 Q So do you have any recollection of ever</p> <p>9 doing that for somebody?</p> <p>10 A No.</p> <p>11 Q Were the people in your office generally</p> <p>12 aware that you had a scanner that was available?</p> <p>13 A I don't know.</p> <p>14 Q Did Jackie Thornton -- is that your</p> <p>15 administrative assistant?</p> <p>16 A Correct.</p> <p>17 Q At the time, in 2014?</p> <p>18 A Yes.</p> <p>19 Q Was she aware that you had a scanner?</p> <p>20 A I don't know.</p> <p>21 Q Do you recall her ever using your scanner?</p> <p>22 A No.</p> <p>23 Q What did you use your scanner for?</p> <p>24 A Scanning photos.</p> <p>25 Q Did you ever use it to scan anything else</p> <p style="text-align: right;">Page 40</p>
<p>1 Q Matt Callaway?</p> <p>2 A I would say that I interacted with all</p> <p>3 the -- all my -- all the other Media Relations</p> <p>4 staffers.</p> <p>5 Q And would you talk about what you were</p> <p>6 working on with each other?</p> <p>7 A As applicable.</p> <p>8 Q Who is Krista Smith?</p> <p>9 A She works for the university in their</p> <p>10 marketing communications.</p> <p>11 Q Did you ever have any dealings with her?</p> <p>12 A I knew who she was, and I don't recall any</p> <p>13 actual dealings with her.</p> <p>14 Q Where was the scanner located that you were</p> <p>15 referring to earlier, back in 2014?</p> <p>16 A Under my desk.</p> <p>17 Q So you had a scanner under your desk back in</p> <p>18 2014?</p> <p>19 A Yes.</p> <p>20 Q Did anyone use this scanner besides you?</p> <p>21 A I don't recall. If they -- if they did,</p> <p>22 they would have just asked me to scan whatever they</p> <p>23 needed.</p> <p>24 Q But this was a scanner that could be used by</p> <p>25 anybody in the office; is that correct?</p> <p style="text-align: right;">Page 39</p>	<p>1 besides photos?</p> <p>2 A Not to my recollection, because it's a</p> <p>3 photo -- photo scanner.</p> <p>4 Q When you say "it's a photo scanner," what do</p> <p>5 you mean by that?</p> <p>6 A That it's just taking a photo of something.</p> <p>7 Q So when you say "it takes a photo of</p> <p>8 something," it copies an image and reduces it to a</p> <p>9 digital file?</p> <p>10 A Correct.</p> <p>11 Q Okay. But I think you testified you can use</p> <p>12 it to scan other things, including pages of paper;</p> <p>13 right?</p> <p>14 A You could.</p> <p>15 Q Do you remember the model of the scanner you</p> <p>16 had?</p> <p>17 A No. It was a dinosaur, meaning it's old.</p> <p>18 Q Was it old back in 2014?</p> <p>19 A I -- I don't recall when I got my first --</p> <p>20 first scanner. I don't recall -- I don't -- I don't</p> <p>21 recall the iteration of scanners, when it all</p> <p>22 happened.</p> <p>23 Q Do you remember when you first learned of</p> <p>24 The 12th Man book by Michael Bynum and Epic Sports?</p> <p>25 A The 12th Man book. Maybe in 2017, whenever</p> <p style="text-align: right;">Page 41</p>

<p>1 the lawsuit came out.</p> <p>2 Q You think that's the first time you ever --</p> <p>3 A Well, you said a book.</p> <p>4 Q Okay. So when you say "book," you mean like</p> <p>5 a physical copy of a book?</p> <p>6 A Well, you said "book."</p> <p>7 Q Well, there could be books in electronic</p> <p>8 format; correct?</p> <p>9 A Yes.</p> <p>10 Q Okay. And when you said "book," you using</p> <p>11 just in the physical sense of when you first learned</p> <p>12 about the existence of a book? I'm just trying to</p> <p>13 clarify.</p> <p>14 A Yeah, yeah, I mean, whenever I learned that</p> <p>15 Mike was doing a 12th Man book would have been 2017.</p> <p>16 Q Okay. You didn't have any notice before</p> <p>17 that that he was working on a 12th Man book?</p> <p>18 A He works on books. I -- it's not my job</p> <p>19 to -- he worked on a variety of books for a long time.</p> <p>20 I never saw any of them.</p> <p>21 Q Okay. You never saw any of the books --</p> <p>22 A Not at --</p> <p>23 Q -- is that right?</p> <p>24 A -- Texas A&amp;M.</p> <p>25 MR. PATRON: Okay. One thing I forgot</p> <p style="text-align: right;">Page 42</p>	<p>1 I don't want to get lost in the flotsam of the photo</p> <p>2 archive.</p> <p>3 Q I want to talk about that photo archive, but</p> <p>4 let's talk about your -- what would you call that?</p> <p>5 I'm using the right words. This is your filing</p> <p>6 system, a cabinet in your office, where you would keep</p> <p>7 things that you wanted to retain?</p> <p>8 A I have a filing cabinet in my office.</p> <p>9 Q And that's where you would keep some of the</p> <p>10 things that you wanted to save for yourself?</p> <p>11 A Yes.</p> <p>12 Q Okay. And is that separate from an archival</p> <p>13 system that the department had? Does the department</p> <p>14 have a separate archival system?</p> <p>15 A Yes.</p> <p>16 Q Okay. How is that archival system</p> <p>17 maintained, the department archival system?</p> <p>18 A We have rooms filled with filing cabinets</p> <p>19 and manila envelopes with still photos and articles</p> <p>20 that may have been written about a person.</p> <p>21 Q And back in 2013 and 2014, was there a</p> <p>22 digital archival system where you would keep things</p> <p>23 electronically stored?</p> <p>24 A I wish we were better at this, at -- at the</p> <p>25 whole organization system, but we're -- we had a</p> <p style="text-align: right;">Page 44</p>
<p>1 to say at the beginning of this is that this isn't an</p> <p>2 endurance competition, and if you need to take a break</p> <p>3 at any point, you know, just please let me know, let</p> <p>4 Mr. Chester know.</p> <p>5 MR. CHESTER: You think we could take a</p> <p>6 short break now?</p> <p>7 MR. PATRON: Yeah, that's fine.</p> <p>8 THE WITNESS: Great. Yeah.</p> <p>9 MR. CHESTER: Like five minutes?</p> <p>10 MR. PATRON: That's fine.</p> <p>11 THE VIDEOGRAPHER: The time is 10:11.</p> <p>12 We're now off the record.</p> <p>13 (Off the record.)</p> <p>14 THE VIDEOGRAPHER: We're back on</p> <p>15 record. The time is 10:22.</p> <p>16 BY MR. PATRON:</p> <p>17 Q Mr. Marquardt, I want to ask you about</p> <p>18 something we were talking about before, where you have</p> <p>19 some photos that you keep that might have been</p> <p>20 electronically stored and some that were just physical</p> <p>21 copies in boxes. Did you have your own archival</p> <p>22 system that you kept when you were the assistant</p> <p>23 director of Media Relations?</p> <p>24 A There's a filing cabinet in my office for</p> <p>25 particularly important things that I like to keep that</p> <p style="text-align: right;">Page 43</p>	<p>1 server -- a server that collected a lot of digital</p> <p>2 images, digital photos, yes.</p> <p>3 Q Were there things besides photos, such as</p> <p>4 stories or articles, that you would keep</p> <p>5 electronically back in 2013 and 2014?</p> <p>6 A I -- I don't believe so.</p> <p>7 Q So you would keep physical copies of those?</p> <p>8 The things that you wanted to keep, you would not have</p> <p>9 electronic copies of them back in 2013 and 2014?</p> <p>10 A What are we talking about here?</p> <p>11 Q I was asking you if there was an electronic</p> <p>12 archival system, and I think you said, back in 2014,</p> <p>13 you wouldn't have that. You would just have the</p> <p>14 physical copies that you would maintain; is that</p> <p>15 correct?</p> <p>16 A I would say all -- all the -- all the media</p> <p>17 relations people probably archive their stuff in</p> <p>18 different ways. Some of them in three-ring binders.</p> <p>19 Sometimes you would just, you know, there are photos</p> <p>20 that you had, then you would archive them on the</p> <p>21 server. Season stats, the -- I never really worked</p> <p>22 it, but I know there's -- there's like an archive of</p> <p>23 statistical -- whatever statistical things that are</p> <p>24 produced by stat crew was the -- the program, and that</p> <p>25 information is exported and then it goes -- allows you</p> <p style="text-align: right;">Page 45</p>

<p>1 to create HTML on the website and --</p> <p>2 Q Well, you talked about photos, and you said</p> <p>3 that's something that would be archived</p> <p>4 electronically; is that right?</p> <p>5 A Yes.</p> <p>6 Q And then I was asking you about things that</p> <p>7 weren't photos, such as articles and stories. I just</p> <p>8 want to get your testimony correct here. It's my</p> <p>9 understanding you said that that's something that</p> <p>10 wouldn't be electronically stored, that that was</p> <p>11 something that would just be maintained by the people</p> <p>12 in your department; is that correct?</p> <p>13 A I -- I think that's correct.</p> <p>14 Q Okay. All right. I want to show you a</p> <p>15 document that I'm marking as Exhibit 1 for your</p> <p>16 deposition.</p> <p>17 (Exhibit 1 was marked for</p> <p>18 identification.)</p> <p>19 MR. PATRON: I only have three copies.</p> <p>20 This is a copy for you. I don't have copies for you</p> <p>21 guys. Sorry.</p> <p>22 MR. CHESTER: Thank you.</p> <p>23 BY MR. PATRON:</p> <p>24 Q So this is an email exchange that you had</p> <p>25 with Mr. Bynum back in 2010. I want to give you an</p> <p style="text-align: right;">Page 46</p>	<p>1 Q He attached a draft of the book; didn't he?</p> <p>2 A I don't -- I don't know.</p> <p>3 Q Well, do you --</p> <p>4 A Is that what the email indicates?</p> <p>5 Q Well, he's asking you about specific pages,</p> <p>6 like "Look at page 87," or "I'm looking for one to two</p> <p>7 photos from the 1976 game to go with this game story</p> <p>8 on pages 102 to 105."</p> <p>9 Does this not refresh your recollection that</p> <p>10 you were given a draft, advanced copy of a book that</p> <p>11 he was working on that was still a work in progress?</p> <p>12 A No.</p> <p>13 Q Is that because you don't remember receiving</p> <p>14 this email?</p> <p>15 A Well, I surely don't recall getting this</p> <p>16 email.</p> <p>17 Q Well, you responded to it.</p> <p>18 A Yeah.</p> <p>19 Q Do you deny that you responded to it?</p> <p>20 A It's right there, sir.</p> <p>21 Q Okay. So I'm just asking you, you're</p> <p>22 claiming no memory of this. Are you denying that this</p> <p>23 didn't occur?</p> <p>24 A The question of me in this email is "I need</p> <p>25 a head shot of John David Crow, and I'm looking for</p> <p style="text-align: right;">Page 48</p>
<p>1 opportunity to look at it. The email is entitled "E.</p> <p>2 King Gill, 12th Man Book." At the bottom of the page,</p> <p>3 there's an email from James Wilkins to Mike Bynum, May</p> <p>4 5, 2010. It says, "See if this is better, thanks."</p> <p>5 Do you know who James Wilkins is?</p> <p>6 A I do not.</p> <p>7 Q You can turn the page. He writes -- well, I</p> <p>8 think this is Mike Bynum to James. "Please look at</p> <p>9 the new 12th Man Book pages you sent." But you don't</p> <p>10 know who James Wilkins is?</p> <p>11 A No.</p> <p>12 Q Okay. But then in the middle of the first</p> <p>13 page is the email to you that says, "Hi, Brad." It's</p> <p>14 from May 6, 2010, at 9:30 a.m. And it says, "Attached</p> <p>15 is a set of low-resolution PDFs for the 12th Man book.</p> <p>16 I'm still two to three weeks away from finishing this.</p> <p>17 At this point, everything is still a work in</p> <p>18 progress."</p> <p>19 Does this refresh your memory as to when you</p> <p>20 first may have become aware of the 12th Man book that</p> <p>21 Mike Bynum was preparing?</p> <p>22 A No.</p> <p>23 Q And why is that?</p> <p>24 A He's asking me for -- I mean, I answered</p> <p>25 with some photos for the '76 Texas game.</p> <p style="text-align: right;">Page 47</p>	<p>1 one to two photos of this game." I'm sure I sent</p> <p>2 him -- I -- I don't know what I sent him, but I</p> <p>3 clearly am -- am looking at the '76 Texas game, which</p> <p>4 I wouldn't know how that has to do with the -- The</p> <p>5 12th Man book. I mean, the subject of this does not</p> <p>6 have anything to do with --</p> <p>7 Q The subject is "12th Man Book." How does it</p> <p>8 have nothing to do with 12th Man book? The subject of</p> <p>9 the email is "E. King Gill, 12th Man Book." And so</p> <p>10 are you saying this didn't make you aware that he was</p> <p>11 working on a 12th Man book?</p> <p>12 A I'm saying that I answered his question, and</p> <p>13 I did not pay attention to -- I -- I clearly -- I read</p> <p>14 his email, and I -- I provided whatever I could for</p> <p>15 his request, and didn't have any, I mean, I -- I can</p> <p>16 see the words "12th Man book," but at the time I just</p> <p>17 answered his questions.</p> <p>18 Q Did you open the attachment that was</p> <p>19 attached to the email?</p> <p>20 A I have zero recollection of that.</p> <p>21 Q So you just don't remember? It could have</p> <p>22 happened, but you don't remember?</p> <p>23 A Yes.</p> <p>24 Q Okay. Do you know if you had any</p> <p>25 discussions with Mr. Bynum before this email about his</p> <p style="text-align: right;">Page 49</p>



<p>1 12th Man book?</p> <p>2 A No.</p> <p>3 Q You don't recall? And again when you say</p> <p>4 you don't recall, you don't know whether it happened</p> <p>5 or not?</p> <p>6 A Mike has -- has sent many emails over the</p> <p>7 years, and I did not catalog them.</p> <p>8 Q I'm not asking you whether you cataloged</p> <p>9 them. I'm asking whether you have any recollection if</p> <p>10 you had any discussions with Mike Bynum before May 6,</p> <p>11 2010, about his 12th Man book.</p> <p>12 He's sending you this email out of the blue</p> <p>13 that says, "Attached is the low-resolution PDFs for</p> <p>14 the 12th Man book." Did you have any discussions with</p> <p>15 him before this email was sent to you?</p> <p>16 MR. CHESTER: Objection. Asked and</p> <p>17 answered.</p> <p>18 BY MR. PATRON:</p> <p>19 Q You can answer the question.</p> <p>20 A I do not recall.</p> <p>21 Q Okay. Reading your email when you respond,</p> <p>22 you say you have a box of unsorted black and white</p> <p>23 shots from that era, is that what you were referring</p> <p>24 to before how you had loose copies of photos in your</p> <p>25 office?</p> <p style="text-align: right;">Page 50</p>	<p>1 served as our athletic director for an amount of time.</p> <p>2 I'd have to look up.</p> <p>3 Q And do you recall Mr. Crow personally</p> <p>4 bringing you that photo for you to scan?</p> <p>5 A I do recall John David bringing a photo.</p> <p>6 I -- I assume this is -- that's the one I'm referring</p> <p>7 to here.</p> <p>8 Q Did he bring it to you that morning in</p> <p>9 response to the request?</p> <p>10 A I don't recall, but I wouldn't think so.</p> <p>11 Q This might have been something that he</p> <p>12 brought to you personally on some other occasion?</p> <p>13 A Yes.</p> <p>14 Q Okay. You say that he personally brought in</p> <p>15 for you to scan. What was the occasion that he wanted</p> <p>16 you to scan something?</p> <p>17 A I don't recall.</p> <p>18 Q Okay. Do you recall whether he brought the</p> <p>19 photo in for you to scan so that you could give it to</p> <p>20 Mike Bynum because that was the request?</p> <p>21 A I don't recall, but I'm certain that's not</p> <p>22 the scenario. I would -- I believe that John David</p> <p>23 has had a preferred photo from his 1957 that he liked</p> <p>24 to see.</p> <p>25 Q And so this, you think that it was brought</p> <p style="text-align: right;">Page 52</p>
<p>1 A Are you asking specifically about my -- my</p> <p>2 response to Mike in 2010?</p> <p>3 Q Yeah. You refer to the fact that you have a</p> <p>4 box of photos.</p> <p>5 A Yes. I remember finding a -- a box of</p> <p>6 unsorted black and white photos from that era in our</p> <p>7 photo archive.</p> <p>8 Q Okay. I'm going to show you a document I'm</p> <p>9 going to mark as Exhibit 2 now.</p> <p>10 (Exhibit 2 was marked for</p> <p>11 identification.)</p> <p>12 MR. PATRON: This is for you --</p> <p>13 MR. CHESTER: Thank you.</p> <p>14 BY MR. PATRON:</p> <p>15 Q This is a different email response that you</p> <p>16 make to the same email. And you see in the middle of</p> <p>17 the page it's the same email as we saw on the first</p> <p>18 exhibit where he's sending you the 12th Man book.</p> <p>19 And this time you respond, and it appears to</p> <p>20 be on the same day. It says May 6, 2010, at 10:26</p> <p>21 a.m. You say, "Here is a JDC headshot that JDC</p> <p>22 personally brought in for me to scan." Who is JDC?</p> <p>23 A John David Crow.</p> <p>24 Q Who is Mr. Crow?</p> <p>25 A He's the 1957 Heisman Trophy winner, and he</p> <p style="text-align: right;">Page 51</p>	<p>1 to you before May 6, 2010; is that right?</p> <p>2 A Yes.</p> <p>3 Q Okay. And you're referring to a scan back</p> <p>4 in May 6, 2010. Did you have a scanner back in 2010?</p> <p>5 A Yes.</p> <p>6 Q Okay. And it may have been even earlier</p> <p>7 than that because Mr. Crow brought you in his photo</p> <p>8 before that to scan; is that accurate?</p> <p>9 A Yes.</p> <p>10 Q Okay. And did you personally scan that</p> <p>11 photo?</p> <p>12 A I don't recall, but I believe I did.</p> <p>13 Q Was Ms. Thornton working with you back in</p> <p>14 2010?</p> <p>15 A Yes.</p> <p>16 Q Could she have scanned it for you?</p> <p>17 A I know that Jackie got a scanner at some</p> <p>18 point, but I'm not sure when.</p> <p>19 Q So Jackie also had a scanner at some point?</p> <p>20 A Yes.</p> <p>21 Q Do you know if she had one back in 2010?</p> <p>22 A I don't -- I don't recall.</p> <p>23 Q Do you know if she had one in 2013?</p> <p>24 A I don't -- I don't know. Probably.</p> <p>25 Q Okay. So sitting here today, you can't</p> <p style="text-align: right;">Page 53</p>



<p>1 recall actually how that JDC photo was scanned back in 2 2010 or whenever it was scanned?</p> <p>3 A No.</p> <p>4 Q But you sent it to Mr. Bynum in response to 5 his email sending you his 12th Man book; is that 6 right?</p> <p>7 A I sent it to Mr. Bynum because he requested 8 it.</p> <p>9 Q And he requested it because he needed it for 10 page 87 of his 12th Man book; isn't that right?</p> <p>11 A That is what the email says.</p> <p>12 Q And that's why you sent it to him, because 13 he requested it; isn't that correct?</p> <p>14 A Yes.</p> <p>15 Q So you were helping Mr. Bynum back in 2010 16 with his 12th Man book; isn't that correct?</p> <p>17 A I'm going to have to disagree and just say 18 that I'm -- I'm -- he made a request, and I tried to 19 accommodate him.</p> <p>20 Q But that request was specifically for his 21 12th Man book; isn't that true?</p> <p>22 A I don't know. I mean, according to this 23 email. I mean --</p> <p>24 Q I mean, do you deny receiving this email?</p> <p>25 A No.</p> <p style="text-align: right;">Page 54</p>	<p>1 was requesting of me, and it wasn't my project. He 2 needed two photos, or a couple photos. And I tried to 3 accommodate him.</p> <p>4 Q Okay. I'll give you an exhibit I've marked 5 as Exhibit 3.</p> <p>6 (Exhibit 3 was marked for 7 identification.)</p> <p>8 MR. PATRON: Oops, sorry.</p> <p>9 MR. CHESTER: I got it.</p> <p>10 MR. PATRON: Thank you.</p> <p>11 BY MR. PATRON:</p> <p>12 Q This is an email that Mr. Bynum sent to you 13 on June 18, 2010. The first sentence is, "Hi, Brad 14 and Glen." It's also sent to Glen Johnson. Who is 15 Glen Johnson?</p> <p>16 A He was our photographer for many years.</p> <p>17 Q I see that he doesn't have an 18 athletics.tamu.edu email address. Was he a like a 19 freelance photographer, or was he an employee of the 20 university?</p> <p>21 A I don't actually know what -- what his 22 contractual obligation to the university was. I know 23 what I think, but I don't know.</p> <p>24 Q All right. Well, putting aside whether he 25 was an independent contractor or an actual employee,</p> <p style="text-align: right;">Page 56</p>
<p>1 MR. CHESTER: Oh, come on.</p> <p>2 BY MR. PATRON:</p> <p>3 Q Okay. Well, it says, "I need to get a head 4 shot of John David Crow to put in a similar info box 5 for page 87."</p> <p>6 A I've got to say, I don't want to, like, I 7 mean, you're -- you're talking about something for 8 John David Crow and Paul Bryant. None of these have 9 anything to do with the E. King Gill or 12th Man.</p> <p>10 So nothing in what he's requesting from me 11 has any correlation to the 12th Man. So none of these 12 words here made me go, "Oh, he is working on a 12th 13 Man book."</p> <p>14 Q None of the words here in this email 15 suggest -- to you that he's working on a 12th Man 16 book?</p> <p>17 A In the questions where he had an action item 18 for me, there was nothing -- nothing that correlates 19 to the 12th Man.</p> <p>20 Q I just want to understand your testimony. 21 Are you saying that you did not have an understanding 22 that Mr. Bynum was working on a 12th Man book back in 23 2010 when you responded to this email?</p> <p>24 A I'm saying that I didn't note his book 25 because that -- it was not what -- it wasn't what he</p> <p style="text-align: right;">Page 55</p>	<p>1 how did you interface with Mr. Johnson in your 2 capacity as Assistant Director of Media Relations?</p> <p>3 A He was our photographer. He provided us 4 with still photos until he went digital in 2000.</p> <p>5 Q Okay. So he would go to the sporting events 6 and take the photos? Okay.</p> <p>7 A Yes.</p> <p>8 Q So do you recall receiving this email from 9 Mr. Bynum back in June 18, 2010?</p> <p>10 A No.</p> <p>11 Q And do you deny receiving this email, or you 12 just don't remember it?</p> <p>13 A I am not denying it.</p> <p>14 Q Okay. Do you see in the first sentence 15 where it says, "I have attached for your review a 16 draft version of the 12th Man book on E. King Gill and 17 Texas A&amp;M football"? Do you recall looking at that 18 attachment?</p> <p>19 A Is there an attachment?</p> <p>20 Q There is not. He's saying that he attached 21 this, and I'm asking if you recall --</p> <p>22 A Okay.</p> <p>23 Q -- looking at the attachment?</p> <p>24 A No, I do not.</p> <p>25 Q But this is the second email in 2010 where</p> <p style="text-align: right;">Page 57</p>

<p>1 he's sending you a draft version of his 12th Man book; 2 isn't that correct? 3 A According to these emails, yes. 4 Q Okay. Do you know if this is the version of 5 the 12th Man book that you asked your assistant, 6 Jacqueline Thornton, to retype? 7 A Come again? 8 Q I said, do you know if this version of the 9 12th Man book is what you asked your secretary or 10 administrative assistant, Jacqueline Thornton, to 11 retype? 12 A No. 13 Q How do you know that? 14 A Because I asked her to type a stapled 8-1/2 15 by 11 version of -- of an article. 16 Q And where did you get that article? 17 A It was in my desk. I don't -- 18 Q And where did it come from? 19 A -- I -- I don't know. 20 Q So sitting here today, you don't know 21 whether or not it came from the attachment to this 22 email; is that correct? 23 A I -- I am certain it did not come from the 24 attachment of this email. 25 Q How are you certain of that? Because you</p> <p style="text-align: right;">Page 58</p>	<p>1 instruct him not to answer, instruct him not to 2 answer. But if you don't do that, it's just an 3 objection, and he's going to answer. 4 MR. CHESTER: I understand that. But 5 he's my client, and I'll be the one to let him know 6 the difference. 7 MR. PATRON: Well, do you want to tell 8 him after every time you make an objection that he can 9 answer? Because he's not going to know. I mean, 10 that's normally how it works is that you object -- 11 MR. CHESTER: If I don't say anything, 12 then he can answer. 13 THE WITNESS: Okay. 14 MR. CHESTER: But we're not taking 15 instructions from opposing counsel on when to assert 16 the attorney-client privilege or any other privilege. 17 MR. PATRON: I'm not trying to do that, 18 Ray. You know that. I just want, if he -- okay, I 19 think it's clear. 20 If he tells you not to answer, don't 21 answer. If he objects, I think you can answer unless 22 he tells you not to. So I think you can answer the 23 question. 24 THE WITNESS: Can you repeat the 25 question?</p> <p style="text-align: right;">Page 60</p>
<p>1 don't know where it came from. That's what you just 2 testified. 3 A I'm judging off the -- the fact that it was 4 a stapled 8-1/2 by 11, you know, compilation of -- of 5 an article. 6 Q And you don't know where it came from; 7 right? 8 A I do not. 9 Q Okay. So you don't know that it didn't come 10 from this; is that correct? That was my question. 11 A And I think my answer was that I'm sure it 12 didn't come from this. Because, I -- I mean, then 13 you're asking me, did I, you know, so I printed it and 14 made a copy of it and shoved it in my desk and then 15 forgot about it. And that's not logical to me. 16 Q Well, you don't know where it came from that 17 was in your cabinet. So you can't say how it got 18 there; isn't that right? 19 MR. CHESTER: Objection. Form, 20 argumentative. 21 MR. PATRON: You can answer. 22 MR. CHESTER: Listen, I'll tell him 23 when he can answer and not answer, if you don't mind. 24 You can answer. 25 MR. PATRON: Well, Ray, if you want to</p> <p style="text-align: right;">Page 59</p>	<p>1 MR. PATRON: Can you read the question 2 back, please? 3 THE OFFICER: Just one moment, sir. 4 I'm stopping and need a moment. 5 MR. PATRON: Yeah, sure. 6 (The officer repeated the record as 7 requested.) 8 THE WITNESS: Because we've been doing 9 this for a long time, I'm pretty sure that the 10 attachment that was connected to this was a -- a PDF 11 of a -- a page spread of some sort. Not the form 12 that -- that I instructed Jackie to type in. 13 BY MR. PATRON: 14 Q So you do have a recollection of what's 15 attached to this, to this email that we've been 16 looking at, Exhibit Number 3? 17 A I mean, yes. This lawsuit's been going on 18 for a decade. 19 Q Okay. And you think it's different from 20 what you gave your secretary to type? 21 A Yes. 22 Q Okay. Let's go back to that article that 23 you did give your secretary to type, and you say you 24 don't think it was what was attached to this email. 25 Do you have any idea how you came into possession of</p> <p style="text-align: right;">Page 61</p>

<p>1 that article?</p> <p>2 A No.</p> <p>3 Q Do you think there's any possible way you</p> <p>4 would have gotten that article other than through Mike</p> <p>5 Bynum?</p> <p>6 A I don't know.</p> <p>7 Q Can you think of any way that that would</p> <p>8 have happened?</p> <p>9 A There are no facts in my brain about how --</p> <p>10 other -- other ways it could have got in my desk.</p> <p>11 Q Do you think it's likely that you did get it</p> <p>12 from Mike Bynum?</p> <p>13 A I don't know.</p> <p>14 MR. PATRON: All right. We're on</p> <p>15 Exhibit 4 now.</p> <p>16 (Exhibit 4 was marked for</p> <p>17 identification.)</p> <p>18 MR. PATRON: Here you go, Ray.</p> <p>19 MR. CHESTER: Thank you.</p> <p>20 BY MR. PATRON:</p> <p>21 Q Okay. This is you now responding to the</p> <p>22 email that we just went over. Do you remember sending</p> <p>23 this email to Mike Bynum on June 25, 2010, responding</p> <p>24 to his email where he sent you a draft version of the</p> <p>25 12th Man book?</p> <p style="text-align: right;">Page 62</p>	<p>1 Q And the PDF was a draft version of the 12th</p> <p>2 Man book; isn't that correct?</p> <p>3 A If you say so.</p> <p>4 Q I'm not saying it. I want to know what your</p> <p>5 answer is.</p> <p>6 A Well, I don't know -- I opened a PDF. And</p> <p>7 it's, you know, again, not having anything to do with</p> <p>8 the "12th Man" -- "12thMan" tradition.</p> <p>9 Q Why do you say that, that it has nothing to</p> <p>10 do with the "12th Man" tradition?</p> <p>11 A Well, the "12th Man" started in 1922. So,</p> <p>12 that would be A. King Gill, and then really the 12th</p> <p>13 Man tradition came back in, say, '83 when Jackie</p> <p>14 Sorrell started the kickoff team. So Lindsay Nelson</p> <p>15 talking to Bear Bryant has nothing to do with the</p> <p>16 "12th Man" tradition.</p> <p>17 So, I mean, I see his, you know, his subject</p> <p>18 line. I see that he refers to it as -- as this. But</p> <p>19 everything that he's asking me about, the '84 Texas</p> <p>20 game doesn't, you know, they're just A&amp;M history</p> <p>21 stuff. And I'm just trying to help out the man.</p> <p>22 MR. PATRON: I'm going to object as</p> <p>23 nonresponsive.</p> <p>24 BY MR. PATRON:</p> <p>25 Q Is it your testimony that this email</p> <p style="text-align: right;">Page 64</p>
<p>1 A No, I do not.</p> <p>2 Q But you don't deny that you actually sent</p> <p>3 it; you just don't remember it?</p> <p>4 A Correct.</p> <p>5 Q If you look down in the email he sent you on</p> <p>6 June 18th, in the middle of that email he says, "I</p> <p>7 need help in locating images for the following." And</p> <p>8 the first one, he said, "See page 91. Do you have a</p> <p>9 better version of this photo?" Do you see that?</p> <p>10 A I do.</p> <p>11 Q And in your response, you say, "I've used</p> <p>12 that Lindsay Nelson shot from page 91 previously, but</p> <p>13 I can't find a copy of it currently." Do you see</p> <p>14 that?</p> <p>15 A Yes.</p> <p>16 Q So in order to respond to Mr. Bynum asking</p> <p>17 about page 91 of his attachment, you had to actually</p> <p>18 open the attachment and look at it in order to say, "I</p> <p>19 have used that shot from page 91 previously, but I</p> <p>20 can't find a copy of it"; isn't that true?</p> <p>21 A That is correct.</p> <p>22 Q So you actually opened up the draft version</p> <p>23 of the 12th Man book in order to respond to this email</p> <p>24 from Mr. Bynum; isn't that correct?</p> <p>25 A I opened a PDF.</p> <p style="text-align: right;">Page 63</p>	<p>1 exchange had nothing to do with the 12th Man book of</p> <p>2 Mr. Bynum?</p> <p>3 A My take on it was trying to answer or -- or</p> <p>4 accommodate his photo requests. It didn't have</p> <p>5 anything to do with the "12th Man" tradition.</p> <p>6 Q Okay.</p> <p>7 A It's just Aggie football.</p> <p>8 Q I understand that, sir. That wasn't my</p> <p>9 question. My question to you was, it is your</p> <p>10 understanding that this email exchange that you had</p> <p>11 with Mr. Bynum had nothing to do with Mr. Bynum's 12th</p> <p>12 Man book; is that correct?</p> <p>13 A The email's title calls it the 12th Man</p> <p>14 book. But that's not what I read from the email.</p> <p>15 Q And the attachment is a draft version of the</p> <p>16 12th Man book; isn't that correct?</p> <p>17 A Looks to me as if it's just a Texas A&amp;M</p> <p>18 football book.</p> <p>19 Q Why do you say that?</p> <p>20 A Because everything that he's asking me</p> <p>21 about, that win, '84 Texas, Lindsay Nelson, '76 game,</p> <p>22 they don't deal with the "12th Man."</p> <p>23 Q Let me show you a document I'm going to mark</p> <p>24 as Exhibit 5.</p> <p>25 //</p> <p style="text-align: right;">Page 65</p>

<p>1 (Exhibit 5 was marked for 2 identification.) 3 MR. PATRON: This one's your copy. 4 MR. CHESTER: Thank you. 5 BY MR. PATRON: 6 Q You're not on this email chain. I'm just 7 going to represent that to you. This is an email 8 exchange between Matthew Callaway and Krista Smith on 9 January 16, 2014, about the "12th Man" campaign. Have 10 you ever seen this document before? 11 A Yes. 12 Q When did you see this document? 13 A I don't recall. 14 Q Were you aware on January 16 that your 15 department was very active on this "12th Man" 16 campaign? 17 A I don't recall. 18 Q You don't recall having discussions with 19 Matt Callaway and others that you work with about the 20 "12th Man" campaign? 21 A No. 22 Q This would have been in the middle of the 23 playoff season with the Seattle Seahawks in January of 24 2014? 25 A Okay.</p> <p style="text-align: right;">Page 66</p>	<p>1 A I don't know. 2 Q You don't know if he was wrong? 3 A I mean, I don't have any recollections of 4 conversations about -- about the "12th Man" campaign. 5 Q Right. If he did have recollections of 6 discussing it with you, and you don't have those 7 recollections, would you say that he's wrong? 8 A I don't know. 9 Q Do you have any reason to believe that 10 Mr. Callaway was being untruthful when he said that? 11 A No. 12 MR. PATRON: I'm going to mark Exhibit 13 Number 6. 14 (Exhibit 6 was marked for 15 identification.) 16 THE WITNESS: Thank you. 17 MR. PATRON: This one's yours, Ray. 18 MR. CHESTER: Thank you. 19 BY MR. PATRON: 20 Q This is a email that you sent to Benjamin 21 Dierker. Am I pronouncing that correctly? 22 A Yes. 23 Q And Matthew Callaway on January 17, 2014. 24 Who's Mr. Dierker? 25 A He was a student assistant.</p> <p style="text-align: right;">Page 68</p>
<p>1 Q That doesn't refresh your memory of whether 2 you would have been aware of this campaign? 3 A I don't recall this -- I don't recall the 4 campaign. 5 Q Okay. And so you don't recall having 6 discussions with Matt Callaway about the campaign? 7 A I wasn't a part of the campaign. I was 8 doing my own job. 9 Q Mr. Marquardt, I'm not asking you whether 10 you were involved in the campaign. I'm asking you 11 whether you were aware of the campaign. That's a 12 different question. 13 A And I still don't recall. 14 Q Okay. You sat in on the deposition of Matt 15 Callaway. You were present when he was testifying 16 under oath; weren't you? 17 A Yes. 18 Q Do you recall that he said he discussed it 19 with you? Do you remember that testimony of 20 Mr. Callaway? 21 A I listened to five depositions, so I -- I 22 don't recall exactly what he said. 23 Q Well, if he said that he did have 24 discussions with you about it, would you say that he 25 was wrong?</p> <p style="text-align: right;">Page 67</p>	<p>1 Q Okay. Why did you send him this email? 2 A I have zero recollection of that. 3 Q Now, the email you sent is forwarding an 4 email of Ms. Thornton; isn't that correct? 5 A Yes. 6 Q And does Ms. Thornton's email have an 7 attachment to it? 8 A [No audible response.] 9 Q If you turn the page, do you see that where 10 it says, "E. King Gill, The Life and Legend of Texas 11 A&amp;M's 12th Man"? Is that what was attached to Ms. 12 Thornton's email? 13 A Yes. 14 Q And do you remember receiving this email 15 from Ms. Thornton? 16 A Yes. 17 Q Okay. Why was Ms. Thornton sending you this 18 email on January 14, 2014? 19 A Because she had completed a task and sent me 20 a Word doc. 21 Q And what was the task that she completed? 22 A I asked her to type in the article about the 23 "12th Man" tradition, E. King Gill. 24 Q And when did you ask her to do that? 25 A I don't recall. But somewhere in the</p> <p style="text-align: right;">Page 69</p>

<p>1 transition of moving from the west side of Kyle Field</p> <p>2 to the east side of Kyle Field. So sometime</p> <p>3 between -- between the end of 2013 and the beginning</p> <p>4 of 2014.</p> <p>5 Q Can you describe to me what you're referring</p> <p>6 about moving? Were you moving offices?</p> <p>7 A Yes.</p> <p>8 Q Okay. And so you think that you asked her</p> <p>9 sometime, maybe a week or two before she actually sent</p> <p>10 it to you?</p> <p>11 A I don't recall when. I mean, it isn't --</p> <p>12 it's not a -- a high -- it was not a high-priority</p> <p>13 request.</p> <p>14 Q Okay. Well, what did you ask her</p> <p>15 specifically to do?</p> <p>16 A To type it in.</p> <p>17 Q And you gave her the article that you got</p> <p>18 out of your file cabinet?</p> <p>19 A Yes.</p> <p>20 Q Did you give her the complete copy of that?</p> <p>21 A Yes.</p> <p>22 Q And what were your instructions to her?</p> <p>23 A "Please type this in."</p> <p>24 Q And do you have a recollection today of</p> <p>25 giving her those instructions?</p> <p style="text-align: right;">Page 70</p>	<p>1 different than "I don't recall," which is what your</p> <p>2 question was.</p> <p>3 BY MR. PATRON:</p> <p>4 Q Okay. You said "Not that I recall". So,</p> <p>5 are you saying, "No, I didn't do that," or "I don't</p> <p>6 have a memory one way or the other"? That's what I'm</p> <p>7 trying to clarify.</p> <p>8 When you say you don't recall or not that I</p> <p>9 recall, I'm just trying to understand what you mean by</p> <p>10 that. The question was, just so I can back it up,</p> <p>11 was: Do you recall looking at the attachment?</p> <p>12 And you said, I think Mr. Chester said, "Not</p> <p>13 that I recall." And I just want to clarify what you</p> <p>14 mean when you say that. Is that, you don't have a</p> <p>15 memory one way or the other, or "I don't think I did"?</p> <p>16 A I don't think I did, but I don't recall.</p> <p>17 Q Okay. And why do you think you didn't?</p> <p>18 A Because the information I asked her to type</p> <p>19 in wasn't a pressing thing for me. I mean, I wouldn't</p> <p>20 have been really interested in the information until</p> <p>21 the next football season.</p> <p>22 Q Why did you ask her to do it?</p> <p>23 A The -- the "12th Man" story is a very</p> <p>24 common, well-known story, but the details of it are</p> <p>25 less well-known. And we were new to the SEC, and</p> <p style="text-align: right;">Page 72</p>
<p>1 A I know I asked her to do it, but I don't</p> <p>2 recall the -- I don't recall the date or the</p> <p>3 specific -- specific scenario.</p> <p>4 Q Do you remember where you were when you</p> <p>5 asked her to do that?</p> <p>6 A No.</p> <p>7 Q Were you in your office and she was in your</p> <p>8 office? Do you have a recollection of that?</p> <p>9 A No.</p> <p>10 Q So do you have any recollection of the</p> <p>11 specific words that you used when you told her -- to</p> <p>12 give her this task?</p> <p>13 A No.</p> <p>14 Q And did you look at the attachment that she</p> <p>15 sent to you?</p> <p>16 A Not that I -- I recall.</p> <p>17 Q And when you say you don't recall, again,</p> <p>18 just for clarification, you could have looked at it,</p> <p>19 you could have not looked at it, but you just don't</p> <p>20 recall?</p> <p>21 MR. CHESTER: Actually, what he said</p> <p>22 was "Not that I recall."</p> <p>23 MR. PATRON: I'm trying to clarify that</p> <p>24 statement.</p> <p>25 MR. CHESTER: Right. But it's a little</p> <p style="text-align: right;">Page 71</p>	<p>1 the -- the people that were covering us really had no</p> <p>2 idea about the "12th Man" tradition.</p> <p>3 So I was interested in some of the -- the</p> <p>4 deep facts that were in -- in the article that I could</p> <p>5 use in the -- to help the media understand the "12th</p> <p>6 Man" tradition better.</p> <p>7 Q So you intended to use this to help the</p> <p>8 media? Is that what your testimony is?</p> <p>9 A The -- parts of the information, yes.</p> <p>10 Q Right. Why did it have to be retyped? Or</p> <p>11 typed, I should say.</p> <p>12 A Well, because then I can just save it on my</p> <p>13 computer, and then text is searchable.</p> <p>14 Q Do you recall doing that with other articles</p> <p>15 that you received?</p> <p>16 A Yes.</p> <p>17 Q Okay. Can you tell me what articles you've</p> <p>18 done that for?</p> <p>19 A We have, in Athletics, Communications,</p> <p>20 Sports Information, Media Relations, whatever, you</p> <p>21 often keep a clip file that the TV crew, when they're</p> <p>22 talking about your team, they want to read stories</p> <p>23 that are about your team. So that would be one</p> <p>24 instance.</p> <p>25 Q But you could just send them a copy of the</p> <p style="text-align: right;">Page 73</p>

<p>1 article. Why would you have to type that in?</p> <p>2 A Back in the day, we were like clipping out</p> <p>3 of newspapers. And then at some point it went</p> <p>4 digital, and it was just a changing in -- in the way</p> <p>5 that you did things.</p> <p>6 Q Prior to January of 2014, can you give me</p> <p>7 any example of an article that you had Ms. Thornton</p> <p>8 type in to her computer to give you a Word document?</p> <p>9 A Yes. There was a story on the origins of</p> <p>10 Kyle Field that we put in our football media guide.</p> <p>11 Q So that's an example where you had it typed</p> <p>12 in because you wanted to use it in a publication that</p> <p>13 you were going to push out?</p> <p>14 A Yes.</p> <p>15 Q Any other examples of that, that you can</p> <p>16 think of, prior to 2014?</p> <p>17 A As I stated, there were often times where I</p> <p>18 compiled the clip books digitally, and then I would</p> <p>19 put them into my game notes, which would also give the</p> <p>20 media to help them cover the game. And sometimes I</p> <p>21 would pull quotes that they had put in their stories</p> <p>22 into my game notes, as they would be able to tell the</p> <p>23 story better. And so, yes. I mean, I --</p> <p>24 Q That's an example of where you had an</p> <p>25 article that you had Ms. Thornton type the article in</p> <p style="text-align: right;">Page 74</p>	<p>1 mischaracterizing his testimony and --</p> <p>2 MR. PATRON: It's a question.</p> <p>3 MR. CHESTER: Yeah. He said earlier</p> <p>4 that he had done it several times before, and --</p> <p>5 MR. PATRON: Please -- no talking</p> <p>6 objections, Ray --</p> <p>7 MR. CHESTER: -- just because he can't</p> <p>8 remember a specific time over ten years ago, now</p> <p>9 you've changed it into he's never done it before</p> <p>10 except the Kyle Field thing. So I object.</p> <p>11 MR. PATRON: All right. Well, I'm</p> <p>12 going to object to the talking objection. You can</p> <p>13 object and he can answer, or you can instruct him not</p> <p>14 to answer. But you're not to give these standing,</p> <p>15 talking objections, Ray.</p> <p>16 MR. CHESTER: If you're going to twist</p> <p>17 his words and try and trick him, then I'm going --</p> <p>18 MR. PATRON: I'm not tricking him.</p> <p>19 MR. CHESTER: -- to do whatever I need</p> <p>20 to do to protect my client.</p> <p>21 MR. PATRON: Yeah, well, you know</p> <p>22 that's not proper. All right.</p> <p>23 MR. CHESTER: Let me let you finish</p> <p>24 this line of questions if you're not finished, and</p> <p>25 then maybe we can take a short break.</p> <p style="text-align: right;">Page 76</p>
<p>1 as a Word document?</p> <p>2 A No, she wouldn't have to type that in. That</p> <p>3 would just be from -- from the internet. But no, not</p> <p>4 typing --</p> <p>5 Q Right. So I'm asking examples of where you</p> <p>6 had Ms. Thornton type in an article for you in January</p> <p>7 of 2014, and I've asked you for any other times you</p> <p>8 had done that prior to 2014.</p> <p>9 A Right.</p> <p>10 Q You've given me one example.</p> <p>11 A It was -- it was --</p> <p>12 Q Kyle Field.</p> <p>13 A -- Kyle Field, our football stadium.</p> <p>14 Q Right. And it was an article that you had</p> <p>15 her type up because you wanted to put that into a</p> <p>16 publication that you were going to do; right?</p> <p>17 A Yes, into a media guide.</p> <p>18 Q Yeah. Any other examples that you can give</p> <p>19 prior to 2014?</p> <p>20 A No.</p> <p>21 Q So the only other time before 2014 is when</p> <p>22 you had Ms. Thornton do this, was when you wanted to</p> <p>23 use it to push out in a publication for Texas A&amp;M's</p> <p>24 media publication?</p> <p>25 MR. CHESTER: Objection. You're</p> <p style="text-align: right;">Page 75</p>	<p>1 MR. PATRON: That's fine, Ray. Let's</p> <p>2 do that.</p> <p>3 MR. CHESTER: Now's okay?</p> <p>4 MR. PATRON: Yeah.</p> <p>5 THE VIDEOGRAPHER: The time is 11:15.</p> <p>6 We are now off the record.</p> <p>7 (Off the record.)</p> <p>8 THE VIDEOGRAPHER: We're back on the</p> <p>9 record. The time is 11:25.</p> <p>10 BY MR. PATRON:</p> <p>11 Q I'm going to give you a document now I'm</p> <p>12 marking as Exhibit 7.</p> <p>13 (Exhibit 7 was marked for</p> <p>14 identification.)</p> <p>15 MR. CHESTER: Thank you.</p> <p>16 BY MR. PATRON:</p> <p>17 Q These are interrogatory responses that you</p> <p>18 gave in this case. This was back in 2021. Do you</p> <p>19 remember working with your attorneys to respond to</p> <p>20 these questions in the case?</p> <p>21 A Yes.</p> <p>22 Q And I don't know if you verified these</p> <p>23 interrogatory responses. Do you remember whether you</p> <p>24 signed a verification for these interrogatories?</p> <p>25 A I assume I did.</p> <p style="text-align: right;">Page 77</p>



<p>1 Q Okay. Well, let me just ask you, is it your 2 understanding that the answers that you gave in these 3 interrogatories were truthful?</p> <p>4 A Yes.</p> <p>5 Q Okay. I'm going to ask you about some of 6 the questions. If you could turn to page 6. This is 7 an answer that you gave in response to an 8 interrogatory that appears on the previous page. 9 It asks you about individuals and entities 10 that you gave a copy of any version of the Gill 11 biography. And I'm going to go over some of your 12 responses here.</p> <p>13 In the top of page 6, in the middle of that 14 first paragraph, you say, "In answering these 15 interrogatories, Marquardt will refer to the articles 16 by Whit Canning, which he found in paper form in his 17 files as the Canning article." Do you see that?</p> <p>18 A Yes.</p> <p>19 Q Okay. I'm going to ask you about this next 20 sentence. "Marquardt gave the Canning article to his 21 secretary, Jacqueline Thornton, in early 2014." I 22 think earlier, you weren't sure if it was late 2013 or 23 early 2014. You think it's in early 2014; is that 24 correct?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 78</p>	<p>1 A Yes.</p> <p>2 Q Okay. What do you recall about that request 3 from Matt Callaway for information relating to the 4 "12th Man"?</p> <p>5 A Not much beyond he asked me for -- if I had 6 any information on the "12th Man."</p> <p>7 Q Do you know why he was asking you for 8 information about the "12th Man"?</p> <p>9 A Well, I -- I know now that it was for their 10 "12th Man" campaign.</p> <p>11 Q You didn't know at the time?</p> <p>12 A I'm not sure what I knew at the time.</p> <p>13 Q So you could have known. You just might not 14 recall now; is that accurate?</p> <p>15 A He's asking me, I mean, he's asking me for 16 information about the "12th Man." I don't recall what 17 he was asking me -- what it was in relation to.</p> <p>18 Q Do you recall having any discussions with 19 him after you sent him the article, the Canning 20 article, about what he was going to do with it?</p> <p>21 A I have no specific recollection, but I knew 22 I would be a resource for, you know, questions that he 23 might have.</p> <p>24 Q Well, isn't it true that you knew that he 25 was going to post the article?</p> <p style="text-align: right;">Page 80</p>
<p>1 Q Okay. And then it says, "his purpose was to 2 have the information contained and the Canning article 3 preserved as part of his ongoing collection and 4 preservation of information of interest about A&amp;M and 5 the '12th Man.'" Do you see that?</p> <p>6 A Yes.</p> <p>7 Q Had you been collecting and preserving 8 information about the "12th Man" tradition?</p> <p>9 A Not specifically.</p> <p>10 Q Okay. Was this maybe the first thing that 11 you were collecting for that, the "12th Man," that you 12 can recall?</p> <p>13 A I would have collected every image of 14 DX Vital [ph] and E. King Gill. So it's a -- it's a 15 process over many years.</p> <p>16 Q Okay. But that sentence is true to the best 17 of your knowledge; right? That last sentence of the 18 paragraph?</p> <p>19 A Yes.</p> <p>20 Q Okay. Go down two paragraphs. And the last 21 sentence of that paragraph says, "The purpose of 22 forwarding Ms. Thornton's email and attachment was to 23 respond to a request from Matt Callaway for 24 information relating to the '12th Man.'" Is that a 25 true statement?</p> <p style="text-align: right;">Page 79</p>	<p>1 A No.</p> <p>2 Q That's not true? Isn't it true that you 3 actually helped Mr. Callaway determine how the posting 4 should look like?</p> <p>5 A No, Matt Callaway and Matt Simon, they would 6 know how to post the article better than me. They're 7 younger and more tech savvy than me.</p> <p>8 Q Okay. Again, I'm not asking you whether 9 they might have known better. I'm asking you whether 10 you had any involvement in that.</p> <p>11 A I -- I don't recall. I know I was -- I was 12 there. If they needed something, then I would have 13 been there as a resource.</p> <p>14 Q Well, let's go down the page under page 6, 15 the last paragraph. Do you see that where it said, 16 second sentence of the last paragraph? "Marquardt was 17 aware that, Matt Callaway, a colleague in the media 18 relations department, was interested in using the 19 Canning article as part of an effort to highlight and 20 celebrate A&amp;M's '12th Man' tradition." Do you see 21 that?</p> <p>22 A I do.</p> <p>23 Q Okay. Now, you testified that you think 24 these answers are truthful; is that true?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 81</p>



<p>1 Q Okay. Then it says after that, "Marquardt 2 believes he discussed matters involving how the 3 posting should look." Do you see that? 4 A I do. 5 Q Is that true? 6 A I think that I -- I was there as a -- if 7 there was a resource -- I was as a resource. I mean, 8 those guys know how to post it and make it look good. 9 Q But do you recall -- this is your 10 interrogatory response. Do you recall discussing 11 matters involving how the posting should look? 12 A No, I don't. But I -- I would have been 13 there to assist them. 14 Q You were present during Matt Callaway's 15 deposition, I think we established that; right? 16 A Yes. 17 Q Do you recall in his deposition when he 18 testified that you knew that he was going to post it? 19 MR. CHESTER: Wait a minute. I don't 20 believe he said that. 21 MR. PATRON: I'm asking if you recall 22 that. I -- 23 THE WITNESS: I don't recall. 24 MR. PATRON: Okay. 25 THE WITNESS: I took notes, but I have</p> <p style="text-align: right;">Page 82</p>	<p>1 information on the "12th Man." 2 Q Right. That would explain it, that he was 3 interested in the "12th Man" tradition, but this says 4 -- your interrogatory response says that you were 5 aware that he was interested in specifically using 6 that Canning article as part of an effort to celebrate 7 the "12th Man" tradition. How were you aware of that, 8 that he was interested in using the Canning article? 9 A Yeah, I -- I would say that we filled in 10 some blanks after, you know, through the litigation 11 over the years. Then the, you know, the facts became 12 apparent. 13 Q So in January of 2014, you were aware that 14 Matt Callaway was interested in using that Canning 15 article as part of an effort to celebrate and 16 highlight A&amp;M's "12th Man" tradition; is that correct? 17 A Yes. 18 Q When you turn the page, at the top of page 19 7, there's a statement, "Marquardt believes that Jason 20 Cook oversaw the decision to post the Canning article 21 on the website." What is the basis for that belief? 22 A Jason Cook was our director of external, so 23 he would have -- his purview would have included Media 24 Relations, the website, all of our external-facing 25 departments.</p> <p style="text-align: right;">Page 84</p>
<p>1 not reviewed them. 2 BY MR. PATRON: 3 Q So, sitting here today, do you deny what's 4 contained in your interrogatory response that you 5 believe you discussed matters involving how the 6 posting should look like? 7 A Yes, how they should look, I -- I don't 8 think I was involved in that. If -- if they needed -- 9 had other questions, I would have known who the author 10 is and what year it was written. 11 Q Did you give them that information? 12 A I don't recall, but I know that I was there 13 as a resource. 14 Q Do you recall any discussions -- this 15 doesn't say in your interrogatory response who you had 16 these discussions with. Do you recall who you may 17 have had these discussions with? 18 A I know that -- I've learned that Matt and -- 19 Matt Callaway and Matt Simon were collaborating on the 20 posting of this article. 21 Q How were you aware that Matt Callaway, your 22 colleague, was interested in using the Canning article 23 as part of an effort to highlight and celebrate A&amp;M's 24 "12th Man" tradition? 25 A Because he asked me for -- if I had any</p> <p style="text-align: right;">Page 83</p>	<p>1 Q So the belief is based just upon the fact 2 that he was the head of the department, is the reason 3 why you believe that he oversaw that decision? 4 A Yes. 5 Q Okay. Any other reason? 6 A I think Jason, before he came to Athletics, 7 was on the university side and was very involved in 8 protecting the "12th Man" trademark. 9 Q Did you sit in on Jason Cook's deposition? 10 A No. 11 Q If he denied that he had any involvement in 12 the decision to post the Canning article, would you be 13 in a position to disagree with him? 14 A No. 15 Q Dropping down two paragraphs to the third 16 paragraph, the first sentence says, "Marquardt's 17 immediate supervisor, Allen Cannon, instructed 18 Marquardt to have the Canning article removed from the 19 website on January 22, 2014." Why were you instructed 20 to have the Canning article removed? 21 A Allen Cannon's office is directly across 22 from mine. And so whenever he got the call from Mike, 23 then I'd say that Allen doesn't handle digital -- he 24 doesn't handle the website. So -- and I don't either, 25 but I have a very -- working relationship with Matt.</p> <p style="text-align: right;">Page 85</p>

<p>1 Q I'm just trying to understand. I believe 2 your testimony is that you weren't involved in the 3 "12th Man" campaign and you weren't involved in the 4 decision to post this article on the website. So why 5 are you the one that's being instructed to have it 6 removed? 7 A I don't have a good answer to that, except 8 I -- I mean, I have a long relationship with Mike 9 Bynum, and then I have a close relationship with Matt 10 Simon, who is our webmaster. 11 Q The last sentence of that paragraph says, 12 "Marquardt on that same day requested guidance from 13 Jason Cook on how to proceed"; do you recall that? 14 A Yes. 15 Q Well, what do you recall about that 16 discussion? 17 A I believe he emailed -- I emailed him and 18 asked for guidance, and he responded. 19 Q You didn't have a verbal discussion with him 20 about what happened? 21 A I don't recall. 22 Q What did Jason Cook tell you on how to 23 proceed? 24 A As I recall it, he still very much wanted 25 to, you know, have this story on our website and would</p> <p style="text-align: right;">Page 86</p>	<p>1 A No. 2 Q It doesn't have, like, who owns the 3 copyright either; isn't that right? 4 A Correct. 5 Q And it doesn't have the time when this 6 article was written; isn't that correct? 7 A Correct. 8 Q Do you know why it doesn't have that 9 information on this document? 10 A I do not. 11 Q But there was information on the document 12 that you gave her to type that had that information; 13 isn't that correct? 14 A Yes. 15 Q Did you sit in on the deposition of 16 Ms. Thornton? 17 A Yes. 18 Q Do you recall her testimony that she would 19 have typed everything that was given to her to type? 20 MR. CHESTER: Do you have a page cite 21 on that? Because that's not exactly the verbiage I 22 recall. 23 MR. PATRON: I'm not asking what you 24 recall. I'm asking if he recalls. He was there. 25 Do you recall that?</p> <p style="text-align: right;">Page 88</p>
<p>1 there be a way to sort something out with Mike and get 2 permission to keep it on our website? 3 Q Did you also want to keep it on the website? 4 A It -- it didn't matter to me. I -- I was 5 just doing what I was told. 6 Q Do you know why Jason Cook wanted to keep it 7 on the website? 8 A No. 9 Q You didn't have a discussion about that with 10 him? 11 A No. I mean, I think that we can, you know, 12 you hate taking things down from a -- from a website 13 and it was his preference to keep it up there. 14 Q And was it a positive article for the 15 university? 16 A I suppose. It was an article about a 17 tradition that is near and dear to Texas A&amp;M fans. 18 Q Do you know why it was decided to put the 19 article up in the first place? 20 A Part of the campaign. 21 Q Okay. Can you go back to, I believe it's 22 Exhibit 6? It's the email that Jackie Thornton sent 23 to you with the exhibit. The attachment that she 24 typed up, it doesn't have anything in there about who 25 wrote this article; right?</p> <p style="text-align: right;">Page 87</p>	<p>1 MR. CHESTER: Well, you're stating it 2 as a fact that that's what she testified to, and I'm 3 challenging you on that, so -- 4 MR. PATRON: It's a question. I'm not 5 stating facts. 6 THE WITNESS: I mean, I was there, and 7 I took notes. I don't have those notes in front of 8 me. I mean, do you have what she said? 9 MR. PATRON: I do not. I'm asking 10 you -- 11 MR. CHESTER: I have the depo, if we 12 need it. 13 BY MR. PATRON: 14 Q You don't have any recollection of her 15 testimony about what she would have done if given 16 something to type, that she would have typed it all? 17 Do you have any recollection of that? 18 A I -- I believe that's correct. 19 Q Okay. What was actually published in the 20 posting of this article, it did have information about 21 the author and the year that it was written; isn't 22 that correct? 23 A Yes. 24 Q How did that information get into the 25 article that was published if it wasn't what was sent</p> <p style="text-align: right;">Page 89</p>

<p>1 to Matt Callaway?</p> <p>2 A I don't recall exactly, but as I said, I --</p> <p>3 I would have been a resource. I know who the author</p> <p>4 was. I know what year it was written. They -- they</p> <p>5 could have called or texted me, but I didn't have no</p> <p>6 specific memory of that.</p> <p>7 Q Okay. They wouldn't have that information,</p> <p>8 though; would they? You would have it; is that</p> <p>9 correct?</p> <p>10 A I would -- I would say that, I mean, you</p> <p>11 know, that -- that stapled version of the "12th Man"</p> <p>12 story was on my desk, and it was on Jackie's desk for</p> <p>13 a long time. Anybody could have read it while it was</p> <p>14 sitting on her desk, so --</p> <p>15 Q Okay. Was that speculation on your part?</p> <p>16 A You asked me if there was any other way and,</p> <p>17 yeah, probably.</p> <p>18 MR. PATRON: Okay. I'm going to mark</p> <p>19 Exhibit 8.</p> <p>20 (Exhibit 8 was marked for</p> <p>21 identification.)</p> <p>22 MR. CHESTER: Thank you.</p> <p>23 MR. PATRON: Ooh, my bad.</p> <p>24 BY MR. PATRON:</p> <p>25 Q This is a declaration that you submitted in</p> <p style="text-align: right;">Page 90</p>	<p>1 and forward the information to others? Is that</p> <p>2 correct?</p> <p>3 A In -- in my view, it would have been</p> <p>4 specifically in my game notes, which are forwarded to</p> <p>5 other people.</p> <p>6 Q When you say game notes, what are these game</p> <p>7 notes? What does that mean?</p> <p>8 A I put together a -- a package of information</p> <p>9 that describes all the good points of the football</p> <p>10 team or basketball team or whatever sport I'm working</p> <p>11 with. It contains stats and other facts.</p> <p>12 Q So you keep notes on each game, is that what</p> <p>13 I understand your testimony is?</p> <p>14 A Yes.</p> <p>15 Q Okay. Do you send these game notes out to</p> <p>16 people?</p> <p>17 A Yes.</p> <p>18 Q Who do you send them to?</p> <p>19 A I mean, it's posted on our website for</p> <p>20 everyone, fans and everybody to see. I specifically</p> <p>21 forward it to our beat media people.</p> <p>22 Q So you wanted the ability, by having this</p> <p>23 keyed in, the ability to use it in your game notes; is</p> <p>24 that your testimony?</p> <p>25 A Parts of it, yes, the pertinent information.</p> <p style="text-align: right;">Page 92</p>
<p>1 this litigation. Do you recognize it?</p> <p>2 A Yes.</p> <p>3 Q And you signed this under penalty of</p> <p>4 perjury; is that correct?</p> <p>5 A Yes.</p> <p>6 Q On the first page, paragraph 5, you swore in</p> <p>7 this declaration that you "asked my secretary to key</p> <p>8 in Exhibit A from my file so that I could easily</p> <p>9 locate the information contained in the article"; is</p> <p>10 that correct?</p> <p>11 A Correct.</p> <p>12 Q If this is true, why didn't you just have</p> <p>13 the article copied or scanned?</p> <p>14 A I wanted it to be word-searchable.</p> <p>15 Q Why did you want to have it word-searchable?</p> <p>16 A Well, it was very long and just easier to</p> <p>17 get to navigate through it and find pertinent</p> <p>18 information.</p> <p>19 Q Did you want the ability to cut and paste</p> <p>20 from it?</p> <p>21 A Yes.</p> <p>22 Q And why would you want that ability?</p> <p>23 A To provide context on the tradition of the</p> <p>24 "12th Man" to media members.</p> <p>25 Q So, you wanted to be able to cut and paste</p> <p style="text-align: right;">Page 91</p>	<p>1 Q Did you ever use any of the information from</p> <p>2 that article in any of your game notes?</p> <p>3 A No.</p> <p>4 Q Okay. How did you save the Word document</p> <p>5 once you received it from Ms. Thornton?</p> <p>6 A That specific instance, I don't think I ever</p> <p>7 saved it. I just -- it sat in my email box.</p> <p>8 Q If you look at Exhibit A to your</p> <p>9 declaration, this is the document that you say you</p> <p>10 gave to Ms. Thornton to type in; is that correct?</p> <p>11 A Yes.</p> <p>12 MR. CHESTER: I'm sorry, I spaced out.</p> <p>13 What is ---</p> <p>14 MR. PATRON: It's Exhibit A to the</p> <p>15 declaration. It's --</p> <p>16 MR. CHESTER: Okay.</p> <p>17 MR. PATRON: Yeah.</p> <p>18 MR. CHESTER: Got you. Thank you.</p> <p>19 BY MR. PATRON:</p> <p>20 Q But what she sent back to you after keying</p> <p>21 it in did not include the first page; is that right?</p> <p>22 A Yes. That is what I've learned, yes.</p> <p>23 Q And you don't have any understanding of why</p> <p>24 that's the case; is that correct?</p> <p>25 A Correct.</p> <p style="text-align: right;">Page 93</p>

<p>1 Q Is it possible that you gave her the 2 document without the first page to type in? 3 A No. 4 Q Is it possible that you told her, "Don't 5 worry about typing up the first page"? 6 A No. 7 Q And you did not notice when she sent it back 8 to you that it did not include the first page; is that 9 correct? 10 A I don't believe I opened it. 11 Q And when you say you don't believe you 12 opened it, is it that you don't have any memory of 13 opening it, or you think you did not open it? 14 A I think I did not open it. 15 Q Okay. If you look at Exhibit B that's 16 attached to your declaration, this is an email that 17 you sent to Mike Bynum on January 22nd. You say, "Let 18 me know about the excerpt. We're keen to have access 19 to Whit's story. And I'm thinking it might be good 20 pub for your book." Why did you say that "We're keen 21 to have access to Whit's story"? 22 A That was after discussions with Jason Cook, 23 and he had -- and he had said that he wanted to have 24 it still on the website. 25 Q Did you understand this article to be</p> <p style="text-align: right;">Page 94</p>	<p>1 A No. 2 Q What is the TAMU Times? 3 A Something I'm not involved with, but it's a 4 university side email that goes out with links to 5 stories. 6 MR. PATRON: I'll mark this up as 7 Exhibit 9. 8 (Exhibit 9 was marked for 9 identification.) 10 MR. CHESTER: Thank you. 11 BY MR. PATRON: 12 Q Do you recognize this as a screenshot of the 13 TAMU Times where it has the original "12th Man" 14 subject up there? 15 A Yes. 16 Q Do you recall that the Canning article was 17 promoted with a link on this website in January of 18 2014? 19 A I mean, I am after the fact. 20 Q And it contained a link to the athletic 21 department's server; is that your understanding? 22 A That is my understanding after the fact. 23 Q Okay. Did you have any involvement with the 24 TAMU Times in 2014? 25 A No.</p> <p style="text-align: right;">Page 96</p>
<p>1 helpful to the "12th Man" campaign that was going on 2 at the time? 3 A Yes. 4 Q Did you understand the posting of this 5 article to be part of that campaign? 6 A Yes. 7 Q Did you have discussions with your 8 supervisor, Allen Cannon, about using this article as 9 part of the campaign? 10 A No. 11 Q Did your request for your secretary to key 12 in the Canning article have anything to do with the 13 "12th Man" campaign that was going on at the time? 14 A No. 15 Q It was just a coincidence? 16 A Yes. 17 Q And when you sent the article to Matt 18 Callaway, did you have an understanding that he was 19 going to use it for the "12th Man" campaign? 20 A Yes. 21 Q Did you know that he was going to post it to 22 the website? 23 A No. No, I would say that he was going to 24 use parts of it. 25 Q Do you know which parts?</p> <p style="text-align: right;">Page 95</p>	<p>1 Q You never enlisted to work with them to 2 promote athletics through your department? 3 A No. 4 Q Okay. And do you know how the Canning 5 article got posted on the TAMU Times? 6 A No. 7 Q Do you know how many people received the 8 TAMU Times in 2014? 9 A No. 10 Q Is it more than 50,000? 11 A I wouldn't know. I don't even know how many 12 our athletic department email goes to. 13 MR. PATRON: I'm going to show you a 14 document I'm going to mark as Exhibit 10. 15 (Exhibit 10 was marked for 16 identification.) 17 MR. CHESTER: Thank you. 18 BY MR. PATRON: 19 Q Do you recognize this as the document that 20 was ultimately posted on the website? 21 A Yes. 22 Q And we discussed this previously, but it 23 differs from what you sent to Matt Callaway in that 24 underneath the original "12th Man" here it has some 25 language that did not appear in the Word document that</p> <p style="text-align: right;">Page 97</p>

25 (Pages 94 - 97)

<p>1 you sent him; isn't that correct?</p> <p>2 A Yes.</p> <p>3 Q Do you know who added this language?</p> <p>4 A Either Matt Callaway or Matt Simon.</p> <p>5 Q Did you talk to them about that?</p> <p>6 A I don't recall talking to them about it.</p> <p>7 Q And it has the author now where it didn't</p> <p>8 before, "By Whit Canning"; do you see that?</p> <p>9 A Yes.</p> <p>10 Q And do you know who put that in?</p> <p>11 A Same guys.</p> <p>12 Q Okay. And do you recall having any</p> <p>13 discussions with how they came to that information?</p> <p>14 A No, I don't.</p> <p>15 Q And the next thing underneath "By Whit</p> <p>16 Canning," it has some language that says, "Special to</p> <p>17 Texas A&amp;M and Athletics." What do you understand that</p> <p>18 to mean?</p> <p>19 A On a rare occasion that we have content, I</p> <p>20 guess special content, that -- that just denotes it.</p> <p>21 That's my understanding of it.</p> <p>22 Q When does the Media Department use that</p> <p>23 language?</p> <p>24 A The Media Department wouldn't use that</p> <p>25 language. The website would use that.</p> <p style="text-align: right;">Page 98</p>	<p>1 you understand that to mean?</p> <p>2 A Not written by Texas A&amp;M Athletics.</p> <p>3 Q Okay. Have you ever used that language on</p> <p>4 anything that you've published?</p> <p>5 A No.</p> <p>6 Q Have you published articles that weren't</p> <p>7 written by Texas A&amp;M Athletics?</p> <p>8 A No.</p> <p>9 Q You've never worked with outside authors to</p> <p>10 publish their works?</p> <p>11 A No.</p> <p>12 Q Okay. And what involvement did you have</p> <p>13 with Texas A&amp;M Social Media in January 2014?</p> <p>14 A I would say I was a part of it. Just --</p> <p>15 yeah, I -- I would be part of it.</p> <p>16 Q What would you do typically?</p> <p>17 A As I recall it at the time, it would have</p> <p>18 been adding fun facts about what happened during a</p> <p>19 game. We were pretty elementary at the time, I'd say</p> <p>20 and the guy -- yeah --</p> <p>21 Q Can you give an example?</p> <p>22 A Just like, "So-and-so has rushed for 100</p> <p>23 yards today, and that's his eighth straight 100-yard</p> <p>24 game." I don't know. I guess it's really kind of</p> <p>25 esoteric information. At, you know, at the time, that</p> <p style="text-align: right;">Page 100</p>
<p>1 Q Okay. When would that language be used on</p> <p>2 the website by media that is put up there, by the</p> <p>3 Media Department?</p> <p>4 A Media Department or Media Relations, we</p> <p>5 wouldn't be putting that up in that -- in that manner.</p> <p>6 But you asked about another situation --</p> <p>7 Q Can I clarify that? I thought you said that</p> <p>8 Matt Callaway posted this to the website. Isn't that</p> <p>9 what you testified?</p> <p>10 MR. CHESTER: I think he said it was</p> <p>11 Matt Simon.</p> <p>12 THE WITNESS: One of the Matts. Matt</p> <p>13 Simon or Matt Calloway. Both of whom are -- Matt</p> <p>14 Calloway would be in media relations or athletic</p> <p>15 communications. Matt Simon is not.</p> <p>16 BY MR. PATRON:</p> <p>17 Q He's in the web department?</p> <p>18 A Yes.</p> <p>19 Q Okay. So, you don't know who put this</p> <p>20 language in there?</p> <p>21 A No, I don't know. I would assume Matt</p> <p>22 Simon, but I don't know.</p> <p>23 Q And what does it mean to add that language?</p> <p>24 What does it say about this article when you use the</p> <p>25 language "Special to Texas A&amp;M Athletics"? What do</p> <p style="text-align: right;">Page 99</p>	<p>1 is what we were putting up there. Now it's better</p> <p>2 content.</p> <p>3 Q Is this something that you would tweet or</p> <p>4 push out on the website?</p> <p>5 A It would be on -- on Twitter.</p> <p>6 Q Okay. Would you actually do the tweet?</p> <p>7 A On a rare occasion.</p> <p>8 Q On the occasions when you didn't do that,</p> <p>9 would you come up with the content and give it to</p> <p>10 someone to tweet; is that how it would work?</p> <p>11 A No.</p> <p>12 Q So in the example that you gave where you</p> <p>13 said someone ran for a certain number of yards, that</p> <p>14 would be one of the occasions where you did the tweet?</p> <p>15 A Yes.</p> <p>16 Q Okay. So how else were you involved in</p> <p>17 social media besides that?</p> <p>18 A I would say we didn't have as many</p> <p>19 parameters as we -- we do now. So, for me, at that</p> <p>20 time, it was just a -- a vehicle to get out</p> <p>21 information that I thought was -- painted A&amp;M in a</p> <p>22 positive light in regard to student-athlete</p> <p>23 accomplishments. So I -- I wasn't involved in the</p> <p>24 strategy of social media.</p> <p>25 Q Were you aware of any university policies</p> <p style="text-align: right;">Page 101</p>

<p>1 that governed social media in 2014?</p> <p>2 A No.</p> <p>3 Q Were you aware of any requirement that you</p> <p>4 comply with copyright laws as part of your social</p> <p>5 media activities?</p> <p>6 A No. No.</p> <p>7 Q Have you ever seen any university guidelines</p> <p>8 for the Texas A&amp;M that govern social media activities?</p> <p>9 A Yes. Since this lawsuit has come out, I</p> <p>10 don't even know when it originated on TAMU.edu, our</p> <p>11 official university website.</p> <p>12 Q Were those guidelines promulgated as a</p> <p>13 result of this lawsuit?</p> <p>14 A I don't know.</p> <p>15 Q Do you know if any guidelines existed prior</p> <p>16 to this lawsuit?</p> <p>17 A No.</p> <p>18 Q You don't know, or there were none?</p> <p>19 A I don't know.</p> <p>20 Q So you don't know when Texas A&amp;M first came</p> <p>21 up with guidelines for social media activities?</p> <p>22 A No.</p> <p>23 Q Sitting here today, can you say whether or</p> <p>24 not there were any policies in effect in January of</p> <p>25 2014?</p> <p style="text-align: right;">Page 102</p>	<p>1 Q Okay. And on the top of the page, this</p> <p>2 looks like an email from you to Jason Cook, same day.</p> <p>3 It's like 15 minutes later where you're forwarding</p> <p>4 that email to Jason. Do you remember doing that?</p> <p>5 A Yes.</p> <p>6 Q Did Jason ever respond to this email?</p> <p>7 A I remember getting an answer. I don't</p> <p>8 recall if it came via email or phone call.</p> <p>9 Q That's going to be my next question. If you</p> <p>10 didn't receive an email, do you remember having a</p> <p>11 conversation with him either in person or on the</p> <p>12 phone?</p> <p>13 A I don't recall, but I know I don't -- I</p> <p>14 don't act without my supervisor, not direct</p> <p>15 supervisor, but I don't act without him directing me</p> <p>16 on -- on subjects like this.</p> <p>17 Q Jason Cook wasn't your direct supervisor,</p> <p>18 though; right?</p> <p>19 A Correct.</p> <p>20 Q Allen Cannon was; right?</p> <p>21 A That is correct.</p> <p>22 Q The email was from Mike to Allen, but then</p> <p>23 you forwarded the email to Jason. Did you have any</p> <p>24 discussions with Allen before you forwarded this email</p> <p>25 to Jason Cook?</p> <p style="text-align: right;">Page 104</p>
<p>1 A I'm unaware.</p> <p>2 Q But you do know they exist now; right? And</p> <p>3 you don't know when those came online; is that right?</p> <p>4 A Correct.</p> <p>5 Q Okay. Do you know how the university</p> <p>6 tracked its social media efforts back in 2014?</p> <p>7 A No.</p> <p>8 MR. PATRON: I'm going to show you --</p> <p>9 Let me make sure it's not one of mine.</p> <p>10 Darn it. This has been marked as Exhibit Number 11.</p> <p>11 (Exhibit 11 was marked for</p> <p>12 identification.)</p> <p>13 One for you, Ray.</p> <p>14 MR. CHESTER: Thank you.</p> <p>15 BY MR. PATRON:</p> <p>16 Q This is a couple of emails. At the bottom</p> <p>17 of the page, do you see an email from Mike Bynum to</p> <p>18 Allen Cannon copying you on January 22nd, where he</p> <p>19 says, "We have a problem"? Do you remember receiving</p> <p>20 this email?</p> <p>21 A I -- I -- yes.</p> <p>22 Q And this is the email where he says it's a</p> <p>23 problem that the Canning article was posted on the</p> <p>24 website; right?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 103</p>	<p>1 A I don't recall, but that would be the line</p> <p>2 of up, you know, up the chain type things.</p> <p>3 Q Do you know why Allen Cannon had you forward</p> <p>4 the email to Jason Cook, if that's what he did?</p> <p>5 A I -- I think it would be because I'm more</p> <p>6 savvy in things on the website than he is.</p> <p>7 Q Okay. Why are you more savvy than your</p> <p>8 supervisor, Allen Cannon, on things dealing with the</p> <p>9 website?</p> <p>10 A Well, I -- I don't want to disparage Allen</p> <p>11 Cannon at all. I -- I just -- I'm more interested --</p> <p>12 MR. CHESTER: He's about my age.</p> <p>13 THE WITNESS: Well, Allen Cannon is not</p> <p>14 much older than me, but I, you know, I -- I'm able to</p> <p>15 do things, desktop publishing or whatever, and, you</p> <p>16 know, he has a -- a desktop computer. I've taken a</p> <p>17 laptop home with me for, I don't know how many years.</p> <p>18 BY MR. PATRON:</p> <p>19 Q You're more tech savvy than Mr. Cannon; is</p> <p>20 that fair to say?</p> <p>21 A Yes.</p> <p>22 Q Okay. No shame in that. In your email to</p> <p>23 Jason Cook -- would you be truthful when you send an</p> <p>24 email to Mr. Cook?</p> <p>25 A Yes.</p> <p style="text-align: right;">Page 105</p>

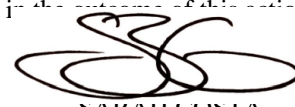
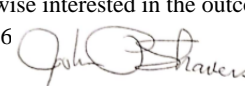


<p>1 Q Okay. You say, "Hey, Jason, needing some 2 guidance here. Last week, I decided to suddenly clean 3 to my office. In doing so, I uncovered an old copy of 4 a story on 'E. King Gill, The Life and Legend of Texas 5 A&amp;M's 12th Man.'" So you're saying on January 22nd 6 that you found this article the previous week; right? 7 A Yes. 8 Q So that would put this no sooner than 9 January 15th? 10 A Yes. 11 Q Okay. You say that you have no recollection 12 of this story about Whit Canning, who I recall from 13 the Fort Worth Star Telegram back in the day. How do 14 you know Witt Canning? 15 A Because he was a sports reporter that 16 covered Texas A&amp;M, and I don't know if that would have 17 been the Big 12 or the Southwest Conference, but it 18 would be a reporter that covered the Aggies on 19 occasion, and he has a distinctive name. 20 Q When you found this article in your office, 21 did you do anything to discover who owned the story? 22 A No. 23 Q Did you call Whit Canning? 24 A No. 25 Q Did you call the Fort Worth Star Telegram?</p> <p style="text-align: right;">Page 106</p>	<p>1 letter -- 2 Q Are you saying it was on the front page of 3 the document you gave to Ms. Thornton to type up? 4 A Yes. 5 Q Okay. But it also had Epic Sports on that 6 page, as well; right? 7 A Yes. 8 Q Did you ever try to figure out who Epic 9 Sports was? 10 A I did after the lawsuit came out. 11 Q I'm talking about at the time when you 12 realized that this had been published without 13 permission. 14 A After Mike Bynum contacted us, then yeah, I 15 looked into all that stuff. 16 Q But not beforehand? 17 A No. 18 Q Okay. Is it true that you never asked 19 anyone about permission to use that article? 20 A Correct. 21 Q But when you sent it to Matt Callaway, you 22 knew he was going to post it on the website; isn't 23 that correct? 24 A I didn't know what his final -- what it was 25 going to look like. It was, you know, it was excerpts</p> <p style="text-align: right;">Page 108</p>
<p>1 A No. 2 Q In the last paragraph you say, "Retired 3 Texas Aggie editor Jerry Cooper was nice enough to 4 point this out to both Whit Canning and Mike Bynum. 5 Now it seems that Mike is not happy." What are you 6 referring to there? 7 A That he pointed it out and alerted them that 8 there was something up on the web. 9 Q And when you say "He was nice enough to 10 point that out," are you being sarcastic there? 11 A Yes. 12 Q Because you didn't think that was nice; did 13 you? 14 A At the time, probably not. 15 Q Was this a problem for you at the time, that 16 you had an article that ended up posted to a website 17 that there was no permission to post? 18 A I don't know if it was a problem, but it was 19 a circumstance that had to be remedied. And I -- I 20 don't want Mike Bynum to be unhappy. I want things to 21 be right. 22 Q How did you know that the story was written 23 by Whit Canning? 24 A It was on -- it was on the page -- the -- 25 the front of that -- the Bynum -- or the Canning</p> <p style="text-align: right;">Page 107</p>	<p>1 or something. I, you know, again, I didn't know what 2 he was doing with it. 3 Q So, you may not have known exactly how he 4 was going to use it on the website, but you knew that 5 he was going to use it in some form or fashion on the 6 website? 7 A Yes. 8 Q And isn't it also true that you knew that, 9 at the time, Texas A&amp;M was involved in a specific 10 campaign to promote the "12th Man" while the Seahawks 11 were still alive in the playoffs? Isn't that true? 12 A I don't recall what I knew before Mike Bynum 13 called, but I know Mike -- or Matt Callaway asked me 14 for an article to be used. 15 Q And in fairness, you've testified that you 16 weren't involved in the "12th Man" campaign -- 17 A Correct. 18 Q -- did you say, I believe you testified that 19 you were aware that the campaign was going on; is that 20 true? 21 A After the fact, I learned about the 22 campaign. 23 Q Well, hadn't the campaign been going on for 24 a while at this point? I mean, there was -- 25 A I don't know.</p> <p style="text-align: right;">Page 109</p>



<p>1 Q Do you remember when you first learned of 2 the campaign? 3 A I mean, I learned about the entire campaign 4 after all this happened with -- with Mike Bynum. 5 Q Just so I'm clear, is it your testimony that 6 you weren't aware of the "12th Man" campaign until 7 after Mike Bynum sent you an email that his article 8 had been posted on the website without his permission? 9 A I was aware that Mike -- that Matt Callaway 10 needed some information on the "12th Man," and so 11 there's a vague knowledge of something is happening. 12 After everything came out, then I, you know, I saw all 13 the stuff that -- that Matt and Krista were working 14 on, but I was not privy to any of that. 15 Q Did the Media Department institute any type 16 of training or guidelines as a result of the posting 17 of this article without permission? 18 A No. 19 Q Were you given any feedback from your 20 supervisor, Allen Cannon, or Jason Cook, about how 21 this should have been handled? 22 A No. 23 Q Did anyone give you feedback about how this 24 should have been handled? 25 A No.</p> <p style="text-align: right;">Page 110</p>	<p>1 (Exhibit 12 was marked for 2 identification.) 3 MR. PATRON: Here you go, Ray. 4 MR. CHESTER: Thank you. 5 BY MR. PATRON: 6 Q This is an email from Shane Hinckley, 7 January 23, 2014. Who is Shane Hinckley? 8 A He is on the university side in marketing 9 and communications. 10 Q And this email is sent to Steve Moore. Who 11 is Steve Moore? 12 A He -- he was also on the university side. 13 I'm not -- I'm not sure what his title was. 14 Q When you say he's on "the university side," 15 does that mean he's not in the Athletics Department? 16 I'm trying to understand that nomenclature. Do you 17 have the Athletics Department and the university? Is 18 that how you're distinguishing these people? 19 A Yeah. Like if you were at a TV station, 20 there would be the news side and the sports side. 21 Q Okay. Got it. Both of those people are on 22 the university side. Shane and Steve; right? 23 A Yes. Steve, not anymore, but yes. 24 Q At the time. And then Katherine Knight. 25 A I don't recognize that name.</p> <p style="text-align: right;">Page 112</p>
<p>1 Q Was there any internal discipline of anyone 2 in the Media Department, to your knowledge, about this 3 incident of the article being posted without 4 permission? 5 A I have no knowledge of -- of that. 6 Q To your knowledge, have you produced all 7 your correspondence with Lane Stevenson [ph], Allen 8 Cannon, and Jason Cook regarding the Whit Canning 9 story? 10 A Yes. 11 Q What did you do to look for that 12 correspondence? 13 A Searched all my emails. I believe that we 14 enlisted the IT department. 15 Q Do you recall, after the article was taken 16 down from the website, whether there was a meeting to 17 discuss what happened? 18 A No, only when the lawsuit was filed, and 19 then there was many meetings. 20 Q But to your knowledge and recollection, 21 there was no sort of, post-incident discussion of how 22 this happened? 23 A Not that I was involved in. 24 MR. PATRON: I'm going to show you a 25 document I'm going to mark as Exhibit 12.</p> <p style="text-align: right;">Page 111</p>	<p>1 Q It doesn't appear that she has an 2 athletics.tamu -- am I saying that right, "tamu"? Do 3 you know who she is? 4 A No. 5 Q And then there's Scott Kelly. Do you know 6 who that is? 7 A I believe he's with the Office of General 8 Counsel. 9 Q Then there's you -- no, there's Jason Cook. 10 "Not me." Were you ever privy to any of this 11 information? 12 A No. 13 Q Turn the page. This is the memorandum to 14 the president. Have you ever seen this document 15 before? 16 A I mean, once the lawsuit came out. 17 Q So, you're now aware that the posting of the 18 Whit Canning story was part of this "12th Man" 19 marketing campaign? 20 A Yes. 21 Q But your testimony is that you weren't aware 22 of that at the time? 23 A Correct. 24 Q Did you ever have discussions with 25 colleagues in your media department about the "12th</p> <p style="text-align: right;">Page 113</p>

<p>1 Man" marketing campaign that you can recall?</p> <p>2 A Before or after the lawsuit?</p> <p>3 Q In 2014, while it was going on.</p> <p>4 A No, I was not a part of the campaign. I</p> <p>5 don't recall discussions of it.</p> <p>6 MR. PATRON: I'm going to mark a</p> <p>7 document as Exhibit 13.</p> <p>8 (Exhibit 13 was marked for</p> <p>9 identification.)</p> <p>10 Here you go, Ray.</p> <p>11 MR. CHESTER: Thank you.</p> <p>12 BY MR. PATRON:</p> <p>13 Q Have you seen this document before?</p> <p>14 A After the lawsuit, yes.</p> <p>15 Q Do you know what this document is?</p> <p>16 A No.</p> <p>17 Q Okay. It's dated January 20, 2014, and it</p> <p>18 appears to be a press release of the Whit Canning</p> <p>19 article; do you see that?</p> <p>20 A Yes.</p> <p>21 Q What is Plus Media Solutions?</p> <p>22 A I don't have any idea.</p> <p>23 Q Do you see the first line where it says</p> <p>24 Texas A&amp;M University, the state of Texas, has issued</p> <p>25 the following news release? Were you aware of any</p> <p style="text-align: right;">Page 114</p>	<p>1 Q Other than your divorce?</p> <p>2 A Then we had a dispute about child support.</p> <p>3 Q Not talking about child support --</p> <p>4 A Okay. Then no.</p> <p>5 Q Okay.</p> <p>6 A I just want to be truthful.</p> <p>7 Q Have you ever filed for bankruptcy?</p> <p>8 A No.</p> <p>9 Q Have you ever been convicted of a crime?</p> <p>10 A No.</p> <p>11 MR. PATRON: All right. Want to take a</p> <p>12 break?</p> <p>13 THE WITNESS: Sure.</p> <p>14 MR. PATRON: All right.</p> <p>15 THE VIDEOGRAPHER: The time is 12:40,</p> <p>16 and we are now off the record.</p> <p>17 (Off the record.)</p> <p>18 THE VIDEOGRAPHER: Back on the record,</p> <p>19 the time is 12:51.</p> <p>20 BY MR. PATRON:</p> <p>21 Q Mr. Marquardt, you remember attached to your</p> <p>22 declaration is the article that you found in your</p> <p>23 cabinet that you gave to Ms. Thornton to type and it</p> <p>24 had on the first page "Copyright 1998 Epic Sports, all</p> <p>25 rights reserved." Do you remember that?</p> <p style="text-align: right;">Page 116</p>
<p>1 news release on January 20, 2014, as your capacity as</p> <p>2 a member of the Media Department?</p> <p>3 A No.</p> <p>4 Q It says Austin. Does Texas A&amp;M have offices</p> <p>5 in Austin?</p> <p>6 A Not that I'm aware of.</p> <p>7 MR. CHESTER: We don't allow that.</p> <p>8 MR. PATRON: What?</p> <p>9 MR. CHESTER: We don't allow that --</p> <p>10 BY MR. PATRON:</p> <p>11 Q In January 2014, what was AG Times? Do you</p> <p>12 know what AG Times is?</p> <p>13 A AG Times, I believe, was a fan website.</p> <p>14 Q Did you have an AG Times account back in</p> <p>15 January 2014?</p> <p>16 A I doubt that I've made an account. I mean,</p> <p>17 I -- I recall looking at it at some point.</p> <p>18 Q Did you ever post on AG Times?</p> <p>19 A Not that I recall.</p> <p>20 Q Were you aware that the Whit Canning story</p> <p>21 was published on the AG Times in January 2014?</p> <p>22 A No.</p> <p>23 Q Have you ever been a party to a lawsuit</p> <p>24 other than the current one?</p> <p>25 A I got divorced. That count?</p> <p style="text-align: right;">Page 115</p>	<p>1 A Yes.</p> <p>2 Q In 2014 when you sent this to Matt Callaway</p> <p>3 and everything that happened after that, did you tell</p> <p>4 anyone that the article that you sent to Matt Calloway</p> <p>5 that ultimately ended up being posted on the website</p> <p>6 was protected by a copyright of Epic Sports?</p> <p>7 A No.</p> <p>8 MR. PATRON: I have no further</p> <p>9 questions and pass the witness.</p> <p>10 MR. CHESTER: We'll reserve ours until</p> <p>11 time of trial.</p> <p>12 MR. PATRON: All right. Thank you,</p> <p>13 Mr. Marquardt. You're about done, but I know we have</p> <p>14 to finish up here.</p> <p>15 THE WITNESS: So ready to go.</p> <p>16 THE OFFICER: So, Mr. Chester, are you</p> <p>17 wanting a copy of the transcript --</p> <p>18 MR. CHESTER: Yes, please. I'll take</p> <p>19 the original or the read and sign.</p> <p>20 THE OFFICER: Okay.</p> <p>21 MR. CHESTER: And a copy of the video</p> <p>22 as well, and I'll need it synced.</p> <p>23 MR. PATRON: You want it synced? You</p> <p>24 got it, John?</p> <p>25 MR. PATRON: Yeah, I want a copy of the</p> <p style="text-align: right;">Page 117</p>

<p>1 transcript, obviously, --</p> <p>2 MR. CHESTER: Yeah.</p> <p>3 MR. PATRON: -- and synced video.</p> <p>4 MR. CHESTER: Synced video.</p> <p>5 THE OFFICER: Synced.</p> <p>6 THE VIDEOGRAPHER: Synced.</p> <p>7 That concludes the deposition. The</p> <p>8 time is 12:53, and we are now off the record.</p> <p>9 (Signature reserved.)</p> <p>10 (Whereupon, at 12:53 p.m., the</p> <p>11 proceeding was concluded.)</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 118</p>	<p>1 CERTIFICATE OF TRANSCRIBER</p> <p>2 I, SARAH COSTA, do hereby certify that this</p> <p>3 transcript was prepared from the digital audio</p> <p>4 recording of the foregoing proceeding, that said</p> <p>5 transcript is a true and accurate record of the</p> <p>6 proceedings to the best of my knowledge, skills, and</p> <p>7 ability; that I am neither counsel for, related to,</p> <p>8 nor employed by any of the parties to the action in</p> <p>9 which this was taken; and, further, that I am not a</p> <p>10 relative or employee of any counsel or attorney</p> <p>11 employed by the parties hereto, nor financially or</p> <p>12 otherwise interested in the outcome of this action.</p> <p>13 January 6, 2025</p> <p>14 </p> <p>15 SARAH COSTA</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 120</p>
<p>1 CERTIFICATE OF DEPOSITION OFFICER</p> <p>2 I, JOHN SHAVERS, the officer before whom the</p> <p>3 foregoing proceedings were taken, do hereby certify</p> <p>4 that any witness(es) in the foregoing proceedings,</p> <p>5 prior to testifying, were duly sworn; that the</p> <p>6 proceedings were recorded by me and thereafter reduced</p> <p>7 to typewriting by a qualified transcriptionist; that</p> <p>8 said digital audio recording of said proceedings are a</p> <p>9 true and accurate record to the best of my knowledge,</p> <p>10 skills, and ability; that I am neither counsel for,</p> <p>11 related to, nor employed by any of the parties to the</p> <p>12 action in which this was taken; and, further, that I</p> <p>13 am not a relative or employee of any counsel or</p> <p>14 attorney employed by the parties hereto, nor</p> <p>15 financially or otherwise interested in the outcome of</p> <p>16 this action. January 6 </p> <p>17 JOHN SHAVERS</p> <p>18 Notary Public in and for the</p> <p>19 State of Texas</p> <p>20</p> <p>21 [X] Review of the transcript was requested.</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 119</p>	<p>1 Ray Chester</p> <p>2 rchester@mcginnislaw.com</p> <p>3 January 6, 2025</p> <p>4 RE: Bynum, Michael J. Et Al. v. Marquardt, Brad</p> <p>5 12/19/2024, Brad Marquardt (#7060382)</p> <p>6 The above-referenced transcript is available for</p> <p>7 review.</p> <p>8 Within the applicable timeframe, the witness should</p> <p>9 read the testimony to verify its accuracy. If there are</p> <p>10 any changes, the witness should note those with the</p> <p>11 reason, on the attached Errata Sheet.</p> <p>12 The witness should sign the Acknowledgment of</p> <p>13 Deponent and Errata and return to the deposing attorney.</p> <p>14 Copies should be sent to all counsel, and to Veritext at</p> <p>15 errata-tx@veritext.com.</p> <p>16 Return completed errata within 30 days from</p> <p>17 receipt of testimony.</p> <p>18 If the witness fails to do so within the time</p> <p>19 allotted, the transcript may be used as if signed.</p> <p>20</p> <p>21</p> <p>22 Yours,</p> <p>23 Veritext Legal Solutions</p> <p>24</p> <p>25</p> <p style="text-align: right;">Page 121</p>

<p>1 Bynum, Michael J. Et Al. v. Marquardt, Brad</p> <p>2 Brad Marquardt (#7060382)</p> <p>3 E R R A T A S H E E T</p> <p>4 PAGE_____ LINE_____ CHANGE_____</p> <p>5 _____</p> <p>6 REASON_____</p> <p>7 PAGE_____ LINE_____ CHANGE_____</p> <p>8 _____</p> <p>9 REASON_____</p> <p>10 PAGE_____ LINE_____ CHANGE_____</p> <p>11 _____</p> <p>12 REASON_____</p> <p>13 PAGE_____ LINE_____ CHANGE_____</p> <p>14 _____</p> <p>15 REASON_____</p> <p>16 PAGE_____ LINE_____ CHANGE_____</p> <p>17 _____</p> <p>18 REASON_____</p> <p>19 PAGE_____ LINE_____ CHANGE_____</p> <p>20 _____</p> <p>21 REASON_____</p> <p>22 _____</p> <p>23 _____</p> <p>24 Brad Marquardt                      Date</p> <p>25</p> <p style="text-align: right;">Page 122</p>	
<p>1 Bynum, Michael J. Et Al. v. Marquardt, Brad</p> <p>2 Brad Marquardt (#7060382)</p> <p>3 ACKNOWLEDGEMENT OF DEPONENT</p> <p>4 I, Brad Marquardt, do hereby declare that I</p> <p>5 have read the foregoing transcript, I have made any</p> <p>6 corrections, additions, or changes I deemed necessary as</p> <p>7 noted above to be appended hereto, and that the same is</p> <p>8 a true, correct and complete transcript of the testimony</p> <p>9 given by me.</p> <p>10 _____</p> <p>11 _____</p> <p>12 Brad Marquardt                      Date</p> <p>13 *If notary is required</p> <p>14 SUBSCRIBED AND SWORN TO BEFORE ME THIS</p> <p>15 _____ DAY OF _____, 20____.</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 NOTARY PUBLIC</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25</p> <p style="text-align: right;">Page 123</p>	

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**[giving - hypothetical]**

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**[idea - january]**

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**[january - known]**

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**[probably - ray]**

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.



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